

COMMERCE, JUSTICE, SCIENCE, AND RELATED  
AGENCIES APPROPRIATIONS FOR 2017

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HEARINGS  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
SECOND SESSION

SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE, AND RELATED  
AGENCIES

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# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR 2017

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WEDNESDAY, FEBRUARY 24, 2016.

## DEPARTMENT OF JUSTICE

### WITNESS

HON. LORETTA LYNCH, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. CULBERSON. The Appropriations Subcommittee for Commerce, Justice and Science will come to order. It is a privilege to have you with us here today, Attorney General Lynch, for our first hearing together with me as the new chairman and you as the new Attorney General. We deeply appreciate your service to the country and for all of us as Americans who depend on the good work that you and your officers and every law enforcement officer at the state and local level do, we want to thank you. As America's chief law enforcement officer we are counting on you to keep us safe, to ensure that the laws are enforced as written by Congress. We are just immensely grateful for the sacrifice that you and everyone that wears the uniform make on behalf of our great country.

We in this fiscal year 2017 will be working to ensure that the Department of Justice has the resources that it needs to do its job in not only enforcing our laws as written by Congress but to combat cyber crime, gangs, terrorism, human trafficking, and espionage.

Of course our Subcommittee has the responsibility to ensure that our constituents' hard-earned tax dollars are spent wisely and frugally and in compliance with Federal law as written by Congress. And we are confident that the relationship that you and I and your staff have already developed, that we are moving in the right direction, which I deeply appreciate. And we will find ways to continue that cooperation in ensuring that the money that is the hard earned money that our constituents pay to the IRS and the Federal government is used to keep our streets safe and is spent wisely and frugally.

It is very important, and we know you as the new Attorney General will do all you can to ensure that we do not hear that any of our hard-earned tax dollars are spent for lavish parties, unnecessary expenses, or unauthorized activities. And in our hearing today and in the weeks and months to come throughout the remainder of President Obama's term in office I know you will work to convince this committee that the Department of Justice is working to

diligently enforce federal law and spend our hard earned tax dollars wisely and frugally to protect us. And even those federal laws that the administration wants to change, but does not have congressional support to change, that is an important part of this. It is our responsibility as good stewards of our constituents' dollars.

I would like to hear in particular today how your Department is protecting Americans' second amendment rights, ensuring that State and local governments are not refusing to cooperate with the Department of Human Security and releasing violent alien criminals into communities. And as the new chairman of this Subcommittee the rule is that if a Federal agency or a State or local government expects to receive federal money they have to comply with Federal law. And I am delighted with the letter you sent me. It looks like we are on the same page. I am very, very pleased to hear that.

We also want to talk about what the Department of Justice is doing to combat cyber crime and espionage, and above all protecting the United States from terrorism.

I look forward to working with you throughout the year as the appropriations process moves forward and before I proceed I would like to recognize our Ranking Member Mr. Honda from California for any remarks he would like to make.

Mr. HONDA. Thank you, Mr. Chairman. And I would also like to thank you for your leadership and fostering really a collegial and open atmosphere amongst the members of our Subcommittee. And I would also like to welcome to our Subcommittee Attorney General Lynch and thank you for coming here to testify today.

As our nation's chief law enforcement officer we are all grateful to you for your service to our country and your commitment to upholding the rule of law. We also especially thank you for the thousands of hardworking men and women at the Department of Justice who are working around the clock to keep us safe.

I look forward to building upon last year's successes by putting together a strong CJS appropriations bill that supports the mission of our law enforcement agencies in protecting the American people, especially the most vulnerable among us in those communities that have been neglected in the past.

I am pleased that the President's budget provides for a healthy increase for what has been a relatively stagnant Department of Justice budget over the past few fiscal years. This year's request includes desperately needed resources for the law enforcement at the federal, State, and local levels to help keep up in combating new and evolving threats to the American people. It also provides resources to those in distress, such as victims of sexual assault and human trafficking, as well as tribal crime victims.

I think we all agree that the mission of the department is critical to our country and that it is vitally important that the Department of Justice has the resources it needs to effectively enforce our nation's laws.

With that, I want to thank you again for joining us this morning. I look forward to hearing your testimony and responses to questions from the members of our subcommittee. Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Honda. Madam Attorney General, you are recognized for your opening statement and, without

objection, your written statement will be entered into the record in its entirety. And if we could I would encourage you to keep your statement to five minutes to summarize and that will give us additional time for questions. But again, welcome. We look forward to hearing your opening statement. And we will proceed. Thank you.

Attorney General LYNCH. Thank you so much, Mr. Chairman. Good morning, and also good morning and thank you also to Ranking Member Honda, all the distinguished members of the committee, the hard working staff. It is an honor to appear before you today.

I am grateful for this opportunity to discuss the President's fiscal year 2017 budget for the Department of Justice, which reflects our enduring commitment to creating the stronger nation and the more empowered communities that every American deserves.

In the last year thanks to the thousands of dedicated men and women who serve the Department of Justice, and thanks to the ongoing support of this distinguished committee, we have taken tremendous steps toward that goal. We have prosecuted violent extremists and dangerous criminals. We have defended the integrity of our markets and the beauty of our natural resources. We have also worked to end human trafficking, to disrupt the flow of illegal drugs and weapons, and to eradicate international corruption. And we have created new opportunities for second chances in our justice system and new foundations of trust in our cities and towns. These are real and meaningful achievements and the request set forth in the President's 2017 budget request will allow us to build upon this encouraging progress.

Now as always, the Department of Justice's first priority is the safety and the security of the American people. The President's Budget would invest an additional \$781 million in our national security capabilities, including in critical measures to address evolving challenges like homegrown extremism, online radicalization, and increasingly sophisticated encryption. Among other items that request contains funds for a new state of the art FBI headquarters which would reduce inefficiencies and streamline internal communications and also significantly boost our ability to thwart emerging criminal and terrorist threats. It devotes an increase of \$63 million to reinforcing our intelligence sharing capabilities. This would allow us to more rapidly coordinate with both our Federal partners and our counterparts overseas and it directs \$38 million towards developing the tools that we need to lawfully access encrypted data and communications so that we can successfully investigate and prosecute criminals and terrorists who attempt to hide the evidence of their crimes.

Now as we have seen recently this is not a theoretical issue. As we have made clear the going dark problem is a very real threat to law enforcement's mission to protect public safety and ensure that criminals are caught and held accountable.

It is a long standing principle in our justice system that if an independent judge finds reason to believe that a certain item contains evidence of a crime then that judge and authorize the government to conduct a limited search for that evidence. If the government needs the assistance of third parties to ensure that the search is actually conducted, judges all over the country and on the

Supreme Court have said that those parties must assist if it is reasonably within their power to do so. And that is what we have been asking. And we owe it to the victims and to the public whose safety we must protect to ensure that we have done everything under the law to fully investigate terrorist attacks on American soil.

Now as technology continues to evolve we are also focused on stepping up our work against those who attempt to use the internet to attack America's infrastructure, to steal trade secrets, and to jeopardize the privacy and the property of everyday citizens. Accordingly the fiscal year 2017 budget would dedicate \$121 million in additional resources to investigating cyber crimes and fortifying the Justice Department's vital information networks. The majority of those resources, \$85 million, will be used to enhance the FBI's ability and capacity to collect and analyze digital evidence and to increase the overall number of cyber investigations. Together this important funding will allow us to keep pace with the fast changing landscape of cyber crime.

Now our commitment to protecting the American people is matched by our dedication to ensuring that they benefit from a criminal justice system that is fair, efficient, and responsive. The fiscal year 2017 budget requests an increase of \$247 million for one of our most successful and groundbreaking undertakings in that area, the Smart on Crime initiative, which encourages alternatives to incarceration for low level non-violent offenders, eases overcrowding in correctional facilities, and frees precious resources for the prevention and deterrence of the most serious crimes. Of that total Smart on Crime request, \$184 million will go to the Bureau of Prison's reentry, rehabilitation, and mental health programming, which are all essential components of our work to help formerly incarcerated individuals make the most of their second chance while ensuring that our communities are strong and safe.

Those are the kind of communities that we seek for every American and they require bonds of trust and respect between law enforcement officers and the people we serve. Helping to repair those bonds where they have frayed is one of my top priorities as Attorney General and the President's request reflects that focus with an increase of \$25 million in a number of programs designed to foster collaboration between residents and law enforcement, including racial reconciliation and restorative justice initiatives as well as improved data collection. It includes additional funds for the department's smart policing program, which encourages local jurisdictions to improve police-citizen interactions while developing cost effective solutions to crime in their communities. And it enlarges our investment in the community oriented policing services hiring program, which extends funding to State and local departments to hire or retain officers so that they can continue to meet the full range of their constituents' needs.

Those of us who work in law enforcement have a special responsibility to protect the most vulnerable among us and few crimes prey more savagely on the vulnerable than human trafficking, which destroys families, weakens communities, and erodes our society's basic foundations of decency and security. The fiscal year 2017 budget sets aside \$89.3 million for the department's efforts to combat this scourge, including \$45 million for efforts to help vic-

tims of trafficking rebuild their lives and reclaim their futures. We are also resolved that each and every one of our young people should grow up in safety and security, which is why the budget includes a net increase of over \$64 million for Office of Justice program grants focused on juvenile justice and at risk youth, including an increase of \$25 million for the Delinquency Prevention Program which seeks to prevent young people from entering the criminal justice system by providing assistance and guidance as early as possible.

Mr. Chairman, Ranking Member, I look forward to working with this committee and with Congress to secure the timely passage of the President's budget which asks for a total of \$29 billion in discretionary funding for the department, including \$27 billion for federal programs and \$2 billion for state, local, and tribal assistance programs. This level of funding will ensure that the outstanding men and women of the Department of Justice, whom I am so proud to lead, can continue their tireless work to protect Americans citizens, to defend America's values, and strengthen America's communities in the days and months ahead.

I thank you once again for the opportunity to appear before you today and I am happy to answer any questions. Thank you, Mr. Chairman, and Mr. Ranking Member.

#### GUANTANAMO BAY

Mr. CULBERSON. Thank you very much. Madam Attorney General, there has been a lot of concern expressed by our constituents and citizens across the country about a proposal just released yesterday that the Department of Defense released to close the military detention facility at the U.S. Naval Station in Guantanamo Bay that at present holds 91 detainees. And as you know the fiscal year 2016 appropriations act for the Department of Justice includes two very specific provisions that prohibit funds from being used to transfer or release or assist in the transfer of detainees to and that prohibits the Department of Justice from acquiring, building, or modifying any facility in the U.S. or its territories to house those detainees. And I just wanted to ask, make sure that, to reassure the country and the Congress, would you agree that the Federal government is prohibited from establishing such facilities and from transferring Guantanamo detainees into the United States or its territories?

Attorney General LYNCH. Thank you, Mr. Chairman. Certainly that is the state of the law most recently passed in the NDAA and certainly as it respects the Department's appropriations. We also do not participate in any efforts to do so.

I believe the President's plan reflects the administration's ongoing goal to close Guantanamo Bay because of the ongoing problems it causes our country, particularly abroad, as a terrorist recruiting center. And certainly in our national security work we do see the effects of that. The administration is committed to closing that and of course we support those efforts.

I would note that the administration is committed to working with Congress to make that happen. And certainly in light of the current statutory framework we anticipate that that is what will occur. So if there is any request of the Department in connection

with that effort, of course we would be happy to help in that regard.

Mr. CULBERSON. But obviously you will not take any action of any kind to assist in the transfer of Guantanamo detainees into the United States until Congress changes the law?

Attorney General LYNCH. Well certainly we would be prohibited from doing so.

Mr. CULBERSON. Right.

Attorney General LYNCH. I am not aware of any efforts to do so at this time in any event.

#### EXECUTIVE ACTIONS ON GUNS

Mr. CULBERSON. Thank you very much. In January the Obama administration announced a new executive action dealing with Americans' right to keep and bear arms, and that is a source of great concern to Americans across the country. Certainly the Second Amendment is an absolute right guaranteed to all Americans and as the subcommittee chairman it is highly important that I will do everything in my power to ensure that that right to keep and bear arms is protected. I was particularly concerned with the guidance on firearms and on licensing that was published as a part of this executive action. And it is, I wanted to ask in particular if the guidance, will in any way impact or affect hobbyists who may engage in just ordinary lawful transfers?

Attorney General LYNCH. Well thank you for the question, Mr. Chairman. I agree with you that it is a very important issue and worthy of debate.

The guidance recently published by ATF, which is going to be distributed at gun shows and to individuals who have questions about whether or not they are required to obtain a license to sell firearms, is designed to gather existing law in one place in a clear, easily understandable version of the various court cases that have opined on this issue. Individuals who have those questions who routinely come to ATF, either the ATF booths at gun shows or frankly even by calling ATF headquarters, will know, will be able to have at their fingertips an outline of what the current law requires. And of course the current law does contain the exception if one is a hobbyist or a collector you are not engaged in the business of dealing in firearms.

Mr. CULBERSON. Right.

Attorney General LYNCH. And a license is not required for those types of transfers. Similarly if one is a family member and given a gift, again, a license is not required for those types of transfers.

Mr. CULBERSON. Terrific. That is what I am aiming at. I just want to reassure people that are listening today that they know that if you are a hobbyist, and you are transferring a gun to a family member as a part of an inheritance, for example, or a gift, if you are a hobbyist or a collector you do not need to worry about this new guidance. Is that what you are telling Americans?

Attorney General LYNCH. That is correct. And what I would encourage people to do is to look at the guidance. Because what we have tried to do is have clear examples of the typical situations where activities fall within the category of being engaged in the business, and also where they typically fall in the category of a



hobbyist transfer, a collector's transfer. And I think people will see in those examples the types of everyday activities that are typically not covered by the law that requires them to get a license and that will distinguish them from those individuals who are engaged in the business.

Mr. CULBERSON. So for Americans listening today they need to know that if they are, unless they are engaged in the regular buying and selling of firearms for a profit as a part of their daily life, that is what they do as a part of their living, obviously those folks need to have a license. But otherwise, you are not targeting or going after individual Americans' right to keep and bear arms, or transfer them to family members, or buy and sell them casually or occasionally. They are not on your radar screen?

Attorney General LYNCH. Well what I would say is that while that is generally the case, there are situations where the courts, in reviewing the statute, have found that even the sale of a few weapons, even if it is not someone's everyday livelihood, if there is other factors, they hold themselves out, they have a business card, for example, they may go to not even a gun show but even a flea market, the courts have held that the individuals in those situations can be considered as being engaged in the business. And so our concern is that, again as I noted, a number of people do reach out to ATF for guidance in this. These are generally individuals who want to comply with the law. And we felt that it would be helpful to provide them with clear examples of situations where the courts have found that individuals with certain activities are engaged in the business of dealing in firearms and provide the assistance to help them gain a license if they want to continue making certain types of sales. The number of guns is not the only factor. And in fact, it need not be someone whose only job or only source of economic income is the selling of firearms, because the courts have found that also.

We also felt that as much as I enjoy being a lawyer, we should not impose that on everyone else to seek out these cases and do the research and try and find on their own what the courts have said about these particular situations. And so we felt that it would be useful, frankly and in response to requests, to gather this information in one, clear, easily understandable format.

Mr. CULBERSON. Well I appreciate the response I got back from the Director of the ATF, and I know it went through your office as well. But it is just important to reassure average Americans that they can relax and there is no need to be concerned unless you are doing this to make a profit on a regular basis. That is very important I think for all of us. I deeply appreciate your answer and I recognize Mr. Honda. Thank you.

#### SEXUAL ASSAULT KIT BACKLOG

Mr. HONDA. Thank you, Mr. Chairman. Last year dealt with sexual assault kit testing and today there are estimated over 400,000 untested rape kits still collecting dust in the evidence room of law enforcement crime labs across this country. We have the technology and the means to process these samples. But we must provide adequate resources, funding, and collaborative efforts to ensure that the testing actually occurs to reduce the existing rape kit backlogs.

The fiscal year 2016 omnibus included \$45 million for reducing the sexual assault kit backlog nationwide. Now this is in addition to \$41 million included in fiscal year 2015. In the President's fiscal year 2017 budget request included another \$41 million for the program. So are there any best practices that have come out of this work so far? And could you share with us the communities that are implementing these policies and their progress?

Attorney General LYNCH. Well, thank you for that, Congressman, and thank you for your commitment to this important issue as well. You certainly are correct in noting that the current budget request includes \$41 million for a community grant program to ensure the resolution of these sexual assault cases to get these kits tested. And these are in fact kits that have never been submitted to crime labs. And the numbers across the country are literally staggering, 10,000 in some cities, 11,000 in other cities. And these of course represent victims. They represent individual women who have suffered one of the most heinous crimes that we can.

With respect to this we have in fact funded the different laboratories who are working with a DNA related forensic program to reduce the backlog also. And so we are looking to enhance that capacity and that capability. Since 2009 we have been working with this effort and the labs who are funded by our DNA capacity enhancement and backlog reduction program have processed almost half a million cases, over 550,000 cases. As a result of just this work alone over a quarter of a million cases, about 240,000 cases, have been uploaded to CODIS and we have gotten almost 100,000 hits so far, 92,000 hits. Meaning we have connected information from the rape kit with someone already in the system. This has allowed us to close numerous cases. While I do not have those figures for you, certainly it has allowed us to close cases and do further investigations.

When we announced the recent grant last September I was privileged to be in New York with the Vice President at the New York forensic laboratory announcing that in conjunction with the Manhattan District Attorney Cy Vance. At the same time we received communication from other district attorneys across the country that money that the federal government had provided and also money that the Manhattan DA's Office had provided was allowing them to close open rape cases and provide comfort to those victims who were living without knowing whether they would ever find justice.

Mr. HONDA. Thank you. And as we proceed it would be very informative for us to know the progress that is being made and its impact on our system. Because as you said, if they are untested then we have victims and perpetrators who are being denied our justice system's process. So it will be very important if we could kept up to date on the progress of that.

Attorney General LYNCH. Yes, sir. And we will do that.

#### TRIBAL JUSTICE

Mr. HONDA. Thank you. On parts of tribal justice and victims of crimes, Native Americans are two and a half times more likely to experience violent crimes than other Americans, yet tribes have not been receiving necessary funds from the Crime Victims Fund. Be-

tween 2010 and 2014 only 16 states passed through money to tribal victims totaling 0.5 percent, or one half of one percent, of available CVF funds. The Department's fiscal year 2017 request for the Office of Justice programs, that request of \$25 million to support tribal assistance for victims of violence from the Crime Victims Fund. Could you describe the ways in which you anticipate this funding will help provide tribal members with crime victim services that they really need?

Attorney General LYNCH. Yes. Thank you for the opportunity to talk about this important work that the Department of Justice is involved in. We take our obligations in Indian Country very seriously. As you know we have a trust relationship with tribal nations, and that is a special obligation and a special bond. And in fact it is a commitment that we look forward to living up to and enhancing.

As you note, Congressman, we are requesting \$25 million for the Crime Victims Fund for tribal assistance. I would simply note that the other funding requests that connect with our obligations to work with our tribal partners the Office of Justice Programs request of \$71 million as part of a flexible tribal grant set aside program. And also the COPS program, community oriented policing, request of \$3 million that will support the Tribal Access Program. Because we have found that it is very helpful if tribal law enforcement has the same access to the NICS system and computerized crime information as other law enforcement agencies, as well as money for the Environmental Natural Resources Division to address environmental problems in Indian Country, and money for the Office of Tribal Justice.

For the crime victims in particular we are focused on the victims of violent crime in Indian Country who tend to be statistically more often women and children, particularly sexual assault victims. And unfortunately that includes children as well. So funds will go toward creating programs for counseling these survivors as well as enhancing tribal justice to ensure that their perpetrators are caught. As I am sure that these members are aware, two years ago in the Violence Against Women Act, an amendment to that Act allowed tribal nations for the first time to have jurisdiction over non-Indian perpetrators of violence against Indian women on the reservation. This had been a gap that prevented justice for a number of victims. This year we are also including grant money to help tribal law enforcement agencies and tribal courts with their court programs to actually focus on prosecuting those cases as well. So it is our hope and our intent to deal with the issue of victims of crime on Indian land, both with a view toward focusing on dealing with victim trauma, particularly that of children, and also strengthening the tribal justice systems that allow for prosecution of those crimes on the actual reservation.

Mr. HONDA. So Mr. Chairman, the sexual assault kit testing issue is there an issue there in Indian Country? And are the programs and the fundings that we are making available, are they also available to the tribal, Indian Country?

Attorney General LYNCH. Yes, indeed.

Mr. HONDA. OK. Thank you. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you very much, Mr. Honda. Mr. Jolly?

Mr. JOLLY. Thank you, Mr. Chairman and Ms. Lynch.  
Attorney General LYNCH. Good morning.

#### EQUITABLE SHARING

Mr. JOLLY. Thank you. My apologies for, I was delayed on the floor. I apologize. I missed part of your opening statement. A couple of questions this morning. I work very closely with our local law enforcement leadership back in Pinellas County, Florida. And as I think many members of this panel and other members of Congress heard regarding the asset forfeiture program when the memo went out in December essentially announcing a suspension of reimbursement of some of the DAG's request. Obviously that created a lot of concern and consternation among local law enforcement. I am aware of the rescission request that had come up, some of the additional rescissions that had come through as well that led to that decision. But my understanding—and we had a very constructive meeting with your senior leadership on this about a month ago—is that the Department anticipates renewing the equitable sharing of the asset forfeiture program sometime in the few coming months. Could you comment on your perspective on where that is and the anticipation of when it might be restarted?

Attorney General LYNCH. Yes. Thank you, Congressman. And thank you for the opportunity to address this issue. Because it has been one of great concern to our State and local colleagues, and also to those of us in the Department of Justice who rely upon them so heavily for the important work that they do in our task forces. If you look at the task forces throughout the Department of Justice law enforcement agencies they are 50 to sometimes 60 percent local law enforcement because they have the best information and we have found it to be an incredibly helpful partnership and one that has saved lives and built cases.

When the rescissions were applied to the Department late last year of an amount greater than I think had been anticipated, certainly the \$1.2 billion was larger than we had anticipated or ever received before, we were forced to temporarily suspend those payments. I have been in contact with the leaders of the law enforcement groups, including police as well as the national sheriffs groups, to discuss the situation with them and advise them, as I am happy to advise you, that this is a temporary deferral of payments. We anticipate that through the course of our work over the year that the Asset Forfeiture Fund will be able to be replenished to an amount where we can resume those payments. We had initially promised our law enforcement partners an update about a month after the action, so I spoke with them at the end of January. We have promised to update them also on a monthly basis and a promise I think to update this body by mid-March as well.

We essentially are looking at the fund to make sure that as we look at the obligations that it sustains to the victims, etcetera, that we have the ability to start those payments. But it is our intent and we have in fact made the request of our law enforcement partners to remain in the task forces and to continue submitting their requests to us so that we can process them as funds are available. And we have noted and we have also made sure that they are aware that even though the equitable sharing payments are tempo-

rarily deferred, what is called the JLEO, the joint law enforcement operation payments, have not been. Because so much of that money goes to support the incredible amounts of overtime and the equipment that they use in supporting these joint efforts. And so we are essentially prioritizing those so that in the immediate term they will be able to cover those expenses. But we have asked them to continue, and I have received commitments from many of them that they will continue working with us.

Mr. JOLLY. And I appreciate that answer and I suppose just for the record, and I do want to work constructively with you on this and your team. But I think there is a little bit of disagreement on how we got there because, yes, the rescission was larger than anticipated. But as you are aware there is the anticipated settlement of roughly \$900 million coming into the fund. This Committee also provided flexibility as to when your Department could execute the rescission. And while I look forward to working in a constructive manner, I do want to make sure this Committee stays on top of ensuring it is restarted, equitable sharing is restarted. And that some of the decisions regarding the accounting of the fund were not made for political purposes but in the best judgment of the department. Because in the estimation of some on the Committee the rescission could have been held off for several months and perhaps prevented a delay. Obviously at the end of the day we appreciate the partnership, as you have said, between local law enforcement and your department. It is critical to many communities, including ours, particularly in the area of human trafficking which I know has been a priority of yours and I thank you for that.

#### SURPLUS MILITARY EQUIPMENT

I am about out of time. But I would ask just one more question. If you could provide your perspective on the 1033 program? I know it is largely a Department of Defense program that shares surplus equipment with local law enforcement. But it has been a program that in some ways has been under scrutiny from the very top, of the President of the United States on down. Could you provide your perspective as the Attorney General in terms of the role that surplus equipment provides in supporting local law enforcement and leadership, or your concerns about it?

Attorney General LYNCH. Well certainly I think that this has been a topic of concern and I hope constructive discussion over the last year, certainly since I have been in this chair. I have had the opportunity to talk about it again with my state and local colleagues, as well as my law enforcement officers and sheriffs about this issue. And as I am sure the group is aware, essentially the administration did issue guidelines on the acquisition of surplus DOD equipment using federal funds. Of course departments using other funds would not have to deal with those particular guidelines. But we hope that they would be instructive. And the focus was on making sure that the equipment was not only appropriately sourced but that appropriate training was provided for the equipment.

Mr. JOLLY. Right.

Attorney General LYNCH. So we see great value and great benefit in having that partnership, again where State and local law enforcement entities, our police officers, our sheriffs departments, can

obtain surplus equipment. Certainly it has been very effective in specific operations that we can all come to mind. It has been very effective, for example, with helping ensure the SWAT teams are adequately sourced and resourced. And so we want to make sure that, again, the appropriate training is set in place and that the equipment is accounted for. So the initial review was to determine what types of equipment worked best and essentially where federal funds were involved to come up with a list that would at least in the administration's view continue to meet local law enforcement needs but also deal with the issues of perhaps overuse of equipment or use of the equipment by departments that were not as well trained as others. And where the use of it, rather than being in the sense of protecting the community, of SWAT type situations, was used in ways that simply inflamed tensions, which was not the intent of anyone.

So I have had an ongoing dialogue, as I noted, with the law enforcement groups as well as my sheriffs, about this program. And it is our hope that as we work through it they will find that they can still obtain the equipment that they need using federal funds, our grants for example, and that it can be put to good use, good use, effective use, in terms of public safety without the intended, the unintended collateral consequences of having the more open program that existed before.

Mr. JOLLY. I appreciate that. I know the full committee chairman came in. I would just offer for your consideration, and I have shared this with folks in the White House as well, this is also an interest of mine given my relationship with local law enforcement. My approach is pretty simple. I have it in legislation that has been introduced. It keeps the 1033 program in place but does require local law enforcement to certify that they have personnel capable or trained on the equipment they are receiving. It leaves the decision as to which equipment is most appropriate for local law enforcement in the hands of local law enforcement but it does require the training to ensure that any equipment is operated within the means of their mission. I appreciate your comments this morning.

Thank you, Mr. Chairman. I know I am over my time. I yield back.

Mr. CULBERSON. Thank you, Mr. Jolly. It is my privilege now to recognize the former District Attorney from Pulaski and Rock County, Kentucky, the gentleman from Kentucky, and chairman of the full Committee, Mr. Hal Rogers.

The CHAIRMAN. Thank you very much. Thanks for the recognition of a former life. But I enjoyed my, enjoy is not the word, I appreciated the time that I served as DA and law enforcement.

Thank you, Madam Attorney General, for being here. Your request totals \$29.5 billion. That is a 3 percent increase over current levels. This committee has a responsibility to prioritize the administration of justice and support for our men and women in law enforcement. And I believe we can do so without spending away our financial integrity.

Though it highlights some important programs, your budget request does not reflect the very real budget constraints that we are faced with. And we look forward to working with you to meet the challenge that we both face in that regard together.

## BYRNE JUSTICE ASSISTANCE GRANTS

That being said, let me specifically mention a couple of concerns that I have, especially first I am disappointed that you propose to slash Byrne Justice Assistance Grants by \$39.6 million. I have heard from law enforcement people around the country about the importance of that very flexible grant program to their crime prevention and drug enforcement activities. Such a drastic reduction in Federal support will be devastating for my state and local partners, particularly as we work collaboratively to address the terrible and magnifying opioid epidemic facing the country. We are losing 100 people a day now to that scourge, epidemic by the CDC's definition.

## PRESCRIPTION DRUG MONITORING PROGRAM

And speaking of opioids I am also concerned that you propose to cut money from the National Prescription Drug Monitoring Program. It may seem insignificant, \$1 million, but that is nearly eight percent of the funding of that whole program. And that is where States are able to catch people who are abusing prescriptions. I cannot imagine you would want to do any kind of harm to that kind of program. It has been extremely successful. Every state has a program except one: Missouri. And they are coming along, but boy are they slow. But it works. It has reduced prescription abuse in 49 states and yet you are trying to shave it away.

There is still progress to be made. This grant program is, I think, part of the solution to the opioid epidemic that is facing our country. One hundred families a day are losing a member to death. My district at one time was leading the way. I hate going to those emergency rooms and seeing a dead young teenager with a family surrounding them. But this program is critical to stopping just that. I would appreciate you telling me what you are going to do about it.

Now those PDMPs in each State are learning to link up with each other. If a person in Kentucky, for example, goes off to Tennessee thinking they can defeat the system, Tennessee's PDMP picks it up and tells our PDMP we have got a problem. So we are getting interoperability, and we are trying to make it now real time. It has been days of delay but if we can make it real time we have got a real thing going. So I would hope you could help us.

## EQUITABLE SHARING

I am highly concerned of the Department's suspension of equitable sharing payments from the proceeds of the asset forfeiture program. Those funds are essential in helping law enforcement fight drug trafficking, among other things. The men and women working at these State and local agencies are your partners, often working side by side with federal agents. And DOJ must find a way to restore those payments as soon as possible to avoid permanent harm to public safety around the country. That one is critical and I cannot believe the action of the department in regard to it.

## MARIJUANA ENFORCEMENT

I am also troubled by your continued tacit approval of marijuana legalization efforts around the county in clear violation of Federal law. Four States and our nation's capital have legalized recreational use of this drug without any Federal response. Casting aside the fact that marijuana is a known gateway drug for young people and its long term effects on their intellectual development is unknown, the bottom line is this. Congress makes the laws of the country. The executive branch enforces those laws. You're tasked with enforcing Federal law as our nation's chief law officer, and I hope you will see O17 as an opportunity to fulfill your mandate given to you by the Congress in this regard.

## PRISON CONSTRUCTION

We thank you for being here. I want to ask you briefly about prison construction. As you know, overcrowding in our penitentiaries poses significant problems for both inmates and guards, not to mention prisoners. In overcrowded facilities inmate misconduct increases, availability of vocational training and meaningful work opportunities diminish, and the risk of disease, mental health, and substance abuse increase. Overcrowding also poses a significant security threat to guards who are already vastly outnumbered by inmates. It is especially dangerous in medium and high security prisons where the majority of inmates are serving sentences for violent crimes.

I see your request slashes the Bureau of Prison's construction funding by a whopping \$417 million, nearly 80 percent at a time of such need of these crowded Federal penitentiaries. It is a headline in tomorrow's newspaper: the overcrowding in federal prisons and the treatment that we are subjecting people to, including guards and the staff. That is going to be a story. I hope you will help us keep it from being a story. Casting aside any conversation about criminal justice reform, how do you intend to deal with the short term problem of prisoner and guard safety with such a dramatic reduction in necessary resources to build new facilities and renovate old? Can you help me?

Attorney General LYNCH. Thank you, Mr. Chairman, for the opportunity to speak on what you certainly have accurately described as one of the challenges facing our prison system today, and the Bureau of Prisons is certainly not immune from that. And I also thank you, not only for your attention and interest in this, but for your support for the Department over the years.

This Committee was instrumental, certainly in prior years up to and including 2016, for providing the Department with funds, approximately \$444 million dollars in fiscal year 2016, and that those funds are going to build a new prison, and I believe it is going to be in Letcher County in Kentucky.

And so that is certainly an important part of reducing our issues of overcrowding, as you so accurately note, issues of correction officer safety as well as inmate safety are certainly implicated by that.

The reason why that same number was not reflected in the 2017 request is because we did receive that money in 2016, we have begun to utilize those funds—it is a multi-year process as I know



you are aware—to build the prison and do the studies, and therefore, we did not need those funds to recur in fiscal year 2017. But I do want to assure you that the funds that were appropriated to specifically deal with this important issue are, in fact, being put to good use as we speak.

And so the fact that you do not see that same number repeated in the budget is not a reflection of a cessation of work, certainly not a cessation of commitment, but simply that having been given those funds we are now working towards utilizing them, and would not ask for those same funds again. That is going to help us tremendously with that.

And the other initiatives that we have in dealing with the Bureau of Prisons, as you mentioned, the overcrowding issues result not only in harm but exacerbation of health issues for the inmates. You mentioned mental health in particular, and you will see within the Bureau of Prisons portion of our budget, funding to deal with those issues also because where we can deal with those issues, we will have safer institutions for the inmates and for the correctional officers who work there.

The CHAIRMAN. I thank you for that statement. I am over my time, Mr. Chairman, thank you.

Mr. CULBERSON. Thank you, Mr. Chairman. I now recognize the gentleman from Washington State, Mr. Kilmer.

Mr. KILMER. Thank you, Mr. Chairman. And thanks for being with us, I have got a bunch of questions and I will try to get to as many as I can.

#### OPIOID ABUSE

I share the chairman's concern about opioid abuse, it has certainly hit a number of the communities in my neck of the woods. I have a lot of rural communities, including the town where I grew up, and small towns. And, you know, I understand the need to balance prevention, and treatment, and enforcement to stop the spread here.

I know the Office of Justice programs provides grant funding for State and local law enforcement assistance, I guess I am hoping you could speak to how those funds are distributed and whether communities like the ones I am talking about, rural towns, small towns, whether they are able to benefit adequately from this, and what this Committee can do to improve the ability of rural communities and small communities that are really struggling with this opioid epidemic. What they can do to realize this support.

Attorney General LYNCH. Well, Congressman, I thank you for raising that issue. Frankly, it is becoming the law enforcement issue of our time. And, of course, the opioid issue is a precursor to the heroin epidemic that we are seeing as well because we are finding that as we look at the heroin epidemic, so many of those individuals begin with prescription drug abuse and they move on to heroin. And, unfortunately, the opioid abuse, the prescription drug abuse, is leading to increasing levels of violence, particularly in the rural areas.

So we do have a request in our budget of about \$383 million for the JAG funding, which is an increase over fiscal year 2016. Now OJP does not have programs that specifically address the opioid

abuse in rural areas, but these grants are available to all law enforcement agencies, particularly to—for the purchase of naloxone.

Over the last year, we have spent a great deal of time in discussion with our local partners. And this particular tool we find is extremely helpful, it is the rapid response overdose treatment. And using grant money to make sure that while we may not be able to fund a clinic, we can make sure that the small police departments and sheriffs offices have access to naloxone can go a long way towards literally saving a life and getting someone to the hospital on time. And so that is something that we are hoping is going to be helpful with regard to that.

I will also say that when it comes to this problem generally, the Administration is taking a whole of administration approach, not just the Department of Justice, but a number of other agencies are involved in looking at this issue: Health and Human Services, Veterans Affairs, for example. All of us focus on finding the best way to deal with this. And, certainly, I think what has emerged from our discussions is that we have to view this as a public health crisis as well as a law enforcement issue, and not just focus on law enforcement, but have a public health component to improve treatment and resources as well for the families and for those people who fall victim to this.

#### COMMUNITY/POLICE RELATIONS

Mr. KILMER. Thank you, I appreciate the focus on that. I wanted to switch gears. Too often we hear stories around distrust between neighborhoods and the police who protect them, but there are some good news stories out there. One of the cities I represent, Tacoma, and communities like them, are working very hard to try to foster a good relationship between law enforcement and the populations that they serve.

We saw a great effort by the city's leadership and the law enforcement leadership called Project Peace, which was trying to bring people together to see how they can improve ties between the community and the police. I guess I would point out—and those sorts of efforts are costly, and programs like Project Peace often can be limited in their success simply due to resources being spread thin in a large city.

I know that the Department's budget proposed doubling the community policing development program, and I am grateful for that, but I am concerned as to whether that is even still enough to meet the demand in our nation.

I just want to get a sense from you, how confident are you that the additional funds that are requested in the budget will actually meet the needs of our communities?

Attorney General LYNCH. Well, Congressman, I think that is an excellent question, because I think those needs are deep. And, certainly, I have spent a great deal of time working on this issue. In 2015 I was engaged in a six city community policing tour, and I did travel to the Pacific Northwest, and this year I will travel to six more cities, focusing on cities that had had a very challenged relationship with the police—a shooting, a pattern and practice investigation, even a lawsuit—but have found a way to create a dialog between law enforcement and the community, and include

young people in that to restore those bonds of trust to build those bridges again.

This year I am focusing on cities that are exemplifying the Six Pillars and the 21st Century Policing Task Force that was the product of last year's work. So I am familiar with some of the programs that you mentioned, I am always happy to pull more into our ambit.

We do have, as you know, key increases for building community trust and community policing; for body worn cameras; for smart policing; collaborative reform. And I think our Community Relation Service is going to be very important in this.

We are asking for \$3.5 million for law enforcement reconciliation work. Community relation services are not law enforcement officers, but they essentially go into the community and work to build those bridges. They work with community leaders in particular, and law enforcement, and the local elected officials as well, to foster dialog around these important problems. They are not investigators, they are not gathering evidence for our law enforcement components at all. And so we are requesting additional funding for them. And so I think that that will be helpful.

I will tell you that I think the most promising efforts that I have seen as I have traveled the country, are those that come from the community as you mentioned, such as Project Peace. And so we are looking for ways to continue to support them through our grant programs. It is a deep need, it is an ongoing need, and I am incredibly impressed with the work that I have seen going on across the country. And we are hopeful that the funds that we request, for a host of issues involving community policing, will help in that regard.

As I talk to police departments, for example, we are supporting a number of them with the body worn camera initiative, and this is an area that I think people have different opinions on. But as these body worn cameras come into use, I think people on both sides of the debate are seeing their utility in providing for accountability and a level of trust in the types of interactions that law enforcement has with civilians.

So we see civilian complaints go down in communities and departments that are implementing the body worn cameras. And we see incidents and reports of use of force go down. And that is all part of the web that we have to build to rebuild the trust bonds that have been frayed in some areas. But I do believe, frankly, that this can be accomplished because I have seen it happen.

Mr. KILMER. Thank you. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you very much, Mr. Kilmer. Now I would like to recognize a former district judge from Williamson County, the gentleman from Texas, Mr. Carter.

Mr. CARTER. Thank you, Mr. Chairman, and welcome, General Lynch, we are glad you are here. My first opportunity to be able to speak to you. As he says, I come from a background of what is the highest trial court in our state, the great state of Texas, and have some familiarity with the criminal justice system in our state.

This last Monday, I did what we call a telephone town hall. We get in touch with roughly 35,000 to 50,000 telephones and we let people get online and ask questions on the phone. When we get

about 10 or 15 of the same people asking the same question, we pick that question. This question came up, this is a tough one, people will be saying it is politics, but I told them I would ask you.

#### STATE DEPARTMENT EMAILS

Here is the issue. The State Department has publically stated that the emails sent and received on Hillary Clinton's personal server are classified. In fact, they refuse to disclose numerous emails as they contain top secret information. As Secretary of State, and one who is seeking the highest office in the land, she should have known better.

Now if the FBI makes the case that Hillary Clinton mishandled classified information and put America's security at risk, will you prosecute the case? Do you know of any efforts underway to undermine the FBI investigation? And please look the American people in the eye and tell us what your position is because you are the chief prosecutor of the United States.

Attorney General LYNCH. Well, thank you, Judge, and Congressman Carter. With respect to our investigation into how information was handled by the State Department, how they handle classified information, as I am sure you know, that matter is being handled by career independent law enforcement agents, FBI agents, as well as the career independent attorneys in the Department of Justice.

They follow the evidence, they look at the law, and they will make a recommendation to me when the time is appropriate. And so beyond that, I am not able to comment on the specific investigation at this time. But what I will say is, again, that this will be conducted as every other case, and we will review all the facts and all the evidence, and come to an independent conclusion as to how to best handle it.

Mr. CARTER. And——

Attorney General LYNCH. And I am also aware of no efforts to undermine our review or investigation into this matter at all.

Mr. CARTER. Well, there were enough people that are concerned about that that you ought to know there is an American public concern that maybe the Justice Department will not do this for political reasons. I am not accusing you of that. I certainly would not expect you to comment on the investigation, and did not ask for that information. But I promised the questioner that asked me the question. I said no one is above the law in the United States, and if you should be brought before a grand jury, the right thing to do would be bringing somebody before a grand jury. That is where you are, and I hope you remain there.

Another question if I got—do I have enough question—enough time?

Mr. CULBERSON. Yes.

#### DOJ/LAW ENFORCEMENT RELATIONS

Mr. CARTER. A few times in history it has been difficult to be a police officer, and it really is. You often have belligerent public holding cameras in your face every time the officer wants to make an arrest. You have civil unrest in high crime communities, and police who do not feel that the Department of Justice really supports them.

Mostly importantly, I am concerned of the perception among our law enforcement officers that the DOJ is opening investigations as an intimidating tactic to force state and local police to push this administration's soft stance on crime. What are you doing to change the perception amongst many of the law enforcement agencies that the DOJ is looking over their shoulder waiting to sue their department every time they make an arrest?

I have heard horror stories of U.S. attorneys refusing to prosecute drug and alien smuggling cases along the border. And let me tell you, if you get caught with 200 pounds of marijuana in Bell County, one of my counties, or Williamson County, you are going to go to prison. Yet, I cannot say that about the smugglers along our southwest border, and it needs to change. Would you please comment?

Attorney General LYNCH. Well, thank you for the opportunity to talk about the important relationship that the Department has with our colleagues in State and local law enforcement, and they are very much our colleagues, with respect to the important work that we all do for the protection of the American people.

I think the issue, as we have discussed just recently, of trust between communities and the law enforcement—particularly law enforcement in the communities that we all serve—is an important one. And I will tell you that the message that I have heard as I have traveled the country speaking directly to law enforcement officers—I speak to the rank and file officers when I visit cities, I speak to community members—is how dedicated they are to their jobs, and how focused they are on their mission.

And I talk to them about why they became police officers and that mission that they feel. And the pressures that they feel because this is a time of great change in policing. But what I hear is their dedication and commitment to continuing their work in protecting the American people.

And so where we have situations where those bonds have been broken, and where law enforcement feels under siege as well—and I have had those conversations with officers—we try and engage them also in discussions about why that is and what might be the causes of it.

One of the things I will say, Congressman, is a benefit of having been a prosecutor for over 20 years, is that I have noted, with actually a very positive view, the way in which we actually do interact with police departments in this current administration. I was involved in reviewing police issues in the 1990s when I was a U.S. Attorney in New York at that time, I have been involved in reviewing them as a U.S. Attorney from 2010 on, and now as Attorney General.

And I think one of the benefits of the relationship now is that the Department has police departments actually coming to it and asking for assistance through our Community Oriented Policing Program, which people refer to as the COPS Program. As you know we fund police officers, we have all that information in the budget for you to review to improve that and to increase our ability to provide additional local law enforcement support.

We also provide what is called collaborative reform. We provide technical assistance, we do not charge departments for this. So po-

lice departments come to us and they say, you know, we are having a problem or an issue, and it may be a community relations issue or it may be a training issue. It may be keeping up with the latest data. It may be finding the resources to, as we always have done, to support them in buying vests, in buying the body worn cameras, as I mentioned. So I have seen a positive relationship between law enforcement at the State and local level and the Department of Justice through this.

Where we have to look at issues of accountability, we speak directly to those departments and try and engage them so that they can be the first person holding an officer accountable when there has been a problem because we all know that there will be issues, and the important thing is to make sure that as we deal with those issues, the American people see that we are dealing with them in a transparent way, in a fair way, and that everyone is treated equally before the law. And we have had a great positive response to that.

So we provide a great deal of support to our local law enforcement officers, again, through the COPS program, as I mentioned. You will see in our budget a number of other areas in which we are seeking to provide support to our state and local colleagues. And we also spend a great deal of time trying to get their input.

I have found it, frankly, very positive to have their input in some of the policies that the Department is putting forth. Most recently, we promulgated policies on dealing with sexual assault victims and domestic violence victims. And this policy was greatly informed by discussion with our state and local colleagues because they are the first responders to those cases. And so as we support those types of cases, for example, with grants for training, we rely on them to give us the actual on-the-ground experience to talk about the best practices and the best policies.

So, Congressman, I would say that this Department of Justice is focused and is, in fact, working well with state and local law enforcement. We have a very positive bond with them because we do the same work, we have the same mission, and we all want to improve as we, in fact, carry out our highest duty which is the protection of the American people.

#### ACTIVE SHOOTER PROGRAM

Mr. CARTER. Quick follow-up. Yesterday I filed a bill, and your Department has worked with me on it, to include the Active Shooter Program in the COPS criteria. The small departments around the country want to train their people up on the active shooter issue and they don't have the funds. And I know that your office helped us, we appreciate it, hope you will support adding the Active Shooter to the criteria of the COPS grants.

And, finally, the reason I mentioned the 200 pounds, because we are clearly told—I think the Chairman has been told also—that it has to be over 200 pounds of marijuana on the—in the Rio Grande Valley and along the border, or the Justice Department will not prosecute. And we think 200 pounds is a lot. Thank you.

Mr. CULBERSON. Thank you, Judge.

Attorney General LYNCH. Thank you.

## DOJ SUPPORT FOR STATE AND LOCAL LAW ENFORCEMENT

Mr. CULBERSON. Attorney General Lynch, I was especially appreciative of your response to Judge Carter's question, on how important it is that every law enforcement officer out there in America know that the Department of Justice has their back. That is a message I hope you will continue to speak out loudly, and clearly, and repeatedly, to make sure that all those local law enforcement officers know how dedicated you are and your Department is to supporting them and helping them.

Last August, our neighborhood deputy, Darren Goforth, was murdered in my neighborhood and it was a catastrophic event, and all of us I know on this Committee and across the country are very concerned. We want every law enforcement officer in the country to know that the members of Congress, and particularly the Department of Justice, know that we have their back and we support them. And appreciate you saying that.

We recognize, as a part of that relationship that you have with local law enforcement, one of the most critical parts of that successful relationship is a sharing of information that local, and state, and Federal law enforcement officers have to know, have to have a complete and open relationship where they share every bit of information possible about criminal defendants.

## SANCTUARY CITIES

And a source of great concern to the country—and I know from our conversations before the hearing began, a concern that you have as well, and I am delighted we are headed in the same direction—is with sanctuary city policies that where a State or local jurisdiction refuses to share information with the Federal—whether it be Homeland Security, Judge Carter—or with the Department of Justice because that information sharing is so critical.

And the policies that a lot of these cities, and counties, and states have where they will refuse to honor a detainer, to hand over a criminal defendant in their custody to federal authorities to be deported, is just unacceptable and terribly dangerous.

Of course, it is standard procedure if an individual is in the Williamson County jail, if they are in the Pulaski County jail, Mr. Chairman, before they are released from that county jail, it is just long standing commonsense that the Pulaski County Sheriff is going to check with State authorities, with Federal authorities, is there an outstanding warrant.

And that individual, when he has served his time in the county jail, will not be released onto the streets of Pulaski County. If there is a warrant in Michigan, they are going to call Michigan and say do you want this guy, and Michigan, come pick him up. And that has been the standard policy of every law enforcement agency in the history of this country.

Until you get to these sanctuary cities where they will not release these individuals. If they have got an illegal alien in their custody who has a criminal warrant for their arrest, these communities have policies that they will not release them to federal authorities for deportation. And this is just absolutely unacceptable.

It is outrageous, and has resulted in the murder of untold thousands of individuals.

And the one that I know that hangs in everyone's mind with great concern is the young lady who was shot and murdered in San Francisco, Kate Steinle, who died in her father's arms. She was shot and murdered by a seven-time convicted felon, a five-time deportee who was released onto the streets of San Francisco due to their utterly unacceptable and illegal sanctuary policy.

And that refusal to share information, that refusal to cooperate with Federal law enforcement authorities, is just absolutely unacceptable. And as we talked about earlier, I am, as the new Chairman, the rules are going to be in this subcommittee if you want—if you expect to receive Federal money, comply with Federal law.

And I want to thank you, Attorney General Lynch, for your timely response to a letter that I sent you earlier this year on sanctuary cities. And, your response to my letter to my expressing the concern that I just laid out here.

You said, in part, that where the Department of Justice receives a credible allegation that an entity, State or local, is receiving funds under a Department grant or a reimbursement program has—after they have assured the Department that they are in compliance with applicable federal laws, where that entity is—where you have credible evidence that they violated a specific applicable federal law, the Department can potentially seek criminal or civil enforcement options against that entity.

As we had discussed, the Title VIII section 1373 of the U.S. Code, specifically prohibits States or localities that have policies that prohibit the sharing of information with ICE about the immigration status of their prisoners, that law says very clearly that local jurisdictions cannot interfere in any way with the sharing of information with Federal authorities.

And I wanted to ask you to assure the committee that the Department of Justice will review grantees with such policies to ensure that they are in compliance with all applicable federal laws?

#### IMMIGRATIONS CUSTOMS ENFORCEMENT DETAINERS

Attorney General LYNCH. Well, certainly, that is a part of our grant review process. And as was also conveyed in the letter, I do want to reiterate the fact that one of the things that we are hopeful will be as effective also, and more immediately effective, is our policy whereby the Bureau of Prisons instead of deferring to the State or local entity's detainer and turning an individual, a deportable individual, over to them, that instead Immigration Customs Enforcement, or ICE, will instead have the ability to step in and exercise their detainer first.

We have in the past deferred because, again, we work with our State and local colleagues and we want to make sure that they can, in fact, adjudicate their cases as well. But particularly where we are dealing with a jurisdiction that essentially is not prone to honoring the ICE detainers—and those vary across the country, they just vary over time and place—our policy is going to be that ICE will instead have the first detainer, and that individual will go into ICE custody and deportation.



Now this may have the effect that there may be local cases that may not be able to be prosecuted because, again, the person will be taken into ICE custody and then deported. And if a jurisdiction has a concern over that, we will talk to them, we would have to have assurances that ICE would also then be able to get the individual back at the end of an adjudication so that the deportation process could go underway. So we are trying to be respectful of our State and local colleagues' desires and goals to prosecute cases, but also do with this issue as well.

Mr. CULBERSON. I genuinely appreciate that, and I think as an example of the cooperative relationship that this committee has had with the Department of Justice, and with you as the new Attorney General, I want to express my sincere gratitude to you for this new policy that you have adopted. Yes, Mr. Chairman?

#### GRANT FUNDING FOR SANCTUARY CITIES

The CHAIRMAN. I am not clear. Will the Department seek to cease any grants going to a particular so-called sanctuary city if they violate your terms? Will you seek to stop that grant program?

Attorney General LYNCH. Well, where again, if the grant is tied to the applicable law. Again, it has to be a connection between the issue and the grant. For example, you know, a grant for human trafficking would be different from a grant for community policing.

But certainly as part of the audit process, as part of the Inspector General review, and as part of the overall grant management review, which the Department's Civil and Criminal Division can also take under investigation, if we receive a credible allegation that a grantee has violated a specific applicable federal law, we will make that referral. Again, there is a audit process in general, but we also have the office of Inspector General who can step in and do a specific investigation of a specific jurisdiction or municipality, and we also have our Civil and Criminal Divisions. Depending upon how the allegation arises.

The CHAIRMAN. Is this a new policy?

Attorney General LYNCH. Well, I think it is in response to the concerns that have been expressed and as part—

Mr. CULBERSON. Thank you.

#### NEW DETAINER POLICY

Attorney General LYNCH [continuing]. And in result of the discussions that we have had with the chairman here as well as other members. But as I indicated, we feel that a way to deal with this issue immediately is to make sure that individuals who are being released from the Bureau of Prisons, rather than be released into state custody, would go directly into immigration custody and be dealt with for deportation there, because a large part of the problem has been that as part of our collaborative working relationship with our State and local partners, as, Mr. Chairman, you indicated, if there is a detainer on an individual coming out of federal prison—certainly when I was young prosecutor, individuals would be released from federal custody but have to go into New York State custody to either finish a sentence or to be prosecuted. And then at that point—at the end of the state case, deportation would be an option.

Where a city is not necessarily inclined to work with the Department of Homeland Security as a general matter, we will instead use the immigration detainer first. And as I indicated, where jurisdictions indicate this was likely to be a problem, we will talk with them and we will work with them. But it is an area of great concern for us.

It is particularly an area of concern for us because there is, unfortunately, case law that exists that—only in one circuit, but there is case law with a particular holding that in certain circumstances, cities' compliance with the requirement that they provide us information may be voluntary. We are also actively litigating the matter in two other jurisdictions.

And so this matter may be unsettled for some time in the courts. So we feel that a way to deal with this issue immediately and directly is to have the policy change as well as to have the review of the grant program that we have been discussing.

Mr. CULBERSON. It is really a great example, Mr. Chairman, of the cooperative relationship that this Committee has had with the Department of Justice. I am very grateful to you. She has announced today a new policy that the Department of Bureau Prisons will first check to see if there is a criminal alien in the custody of the federal prisons has a deportation order, and where that individual may also—as in the case of this guy that murdered Kate Steinle—where San Francisco has a policy they are not going to honor the federal detainer.

In response to the concerns that this Committee, Subcommittee, Mr. Chairman, has addressed to the Department of Justice, you have changed the policy at the Bureau Prisons, which we deeply appreciate, that you will not release that individual to San Francisco, you are going to hand him over to ICE, Chairman Carter, so he can be deported.

We thank you for that change in the policy, that is very important. And then, secondly, we have also learned today, Mr. Chairman, and we very much appreciate that, the Department is moving towards—because this will be litigated forever and we can't wait on that, our lives of countless Americans depend on quick and decisive action.

And in response to the concerns I have expressed earlier this year, you responded immediately and in a very favorable way, which I really appreciate, they are moving right away to go look carefully. And we will provide you with that list of those jurisdictions that do have policies where they will not share information with Federal authorities. They have actually got an explicit policy on the book, we are not sharing information, we will not hand over these individuals to ICE for deportation.

We can provide you with that list, and you have just indicated that you are going to begin an audit process to ensure—to encourage them, because we want them to change the policy. We are not looking to cut them off from Federal money, we want to give them a chance to change their policy, correct, and that's the goal. Change the policy so you hand these individuals over to federal authorities for deportation.

## STATUS REPORT ON SANCTUARY CITIES

The CHAIRMAN. Mr. Chairman, if I could——

Mr. CULBERSON. Yes, please.

The CHAIRMAN [continuing]. Suggest something. This is encouraging to hear this, but I believe that old saying, is trusting and verifying.

Mr. CULBERSON. Yeah, Ronald Reagan.

The CHAIRMAN. Yeah. I wonder if you could give us a report on this after a period of time here, say four months, to give us report on how many of these instances you have actually had success with so that we have some way to gauge——

Mr. CULBERSON. Exactly.

The CHAIRMAN [continuing]. How things are going and maybe make mid-course corrections as we go. This is significant, a very important matter for a lot of us and I would like to know that it is working. Is that agreeable?

Attorney General LYNCH. Well, certainly I think that we are all moving to an evidence-based model, and a host of things. And certainly we are happy to work with you and your staff to provide you the information, both with regard to the new BOP policy, which I think would be instructive——

Mr. CULBERSON. Yes.

Attorney General LYNCH [continuing]. And also any instances again where these allegations occur. As you know, however, once a matter goes into an investigation, if we refer it to the Inspector General, for example, we wouldn't have the information about the investigation readily available at that point. But certainly, you know, if these situations do come up, I think we can work with the Committee to find a way to keep you informed.

The CHAIRMAN. Let's do a quarterly report——

Mr. CULBERSON. Let's do that.

The CHAIRMAN [continuing]. For a while to see how things are going. So we would expect that you would give us a report on how things are going, as much detail as you can give us at the end of the first quarter.

Mr. CULBERSON. I think that is a good idea. Would that be agreeable?

Attorney General LYNCH. Thank you, sir.

Mr. CULBERSON. And this is a very significant change, and we are deeply grateful to you. I know the country is grateful to hear that you are moving in this direction. And it is a good time for it because I know the grant solicitations are just now coming in, Mr. Chairman, the jurisdictions, local city and state jurisdictions across the country, Madam Attorney General, are just now beginning to send in their applications for Byrne JAG, for the various law enforcement grants. So it is a good time for this change to kick in.

As I said, we will provide you and your staff with a list of the jurisdictions that have these policies that refuse to provide information or refuse to honor detainers. And I deeply appreciate your moving in this direction, and we will find a way to do this in a co-operative, friendly, and supportive way to ensure that these jurisdictions are in compliance with the Title VIII Section 1373, that

they have a chance to change their policy, and try to avoid losing their Federal grant money.

But if they insist—and we will work with you—if they insist on hanging onto their policy and they will not honor detainers, and they will not share information, you know, don't ask for federal money unless you follow our Federal law. Delighted to hear you are moving in that direction, and we are going to work with you cooperatively and in a supportive way to ensure that that happens, and to make sure that the law enforcement communities across the country continue that close cooperative working relationship that has been so successful in the past. We really appreciate very much your help in this matter and look forward to working with you. And we will get quarterly reports, Mr. Chairman.

Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman. And as a ranking member, I request a congressional 5 minutes if I may. And I just want to add my congratulations to the Attorney General also, and that how well you respond to our questions and because I understand it is very complicated and there is a lot of different tiers that need to be considered as you move forward on this complex issue of criminal justice and civil rights, and things like that, that we have to face. And I, too, would look forward to seeing a quarterly report because I am confident that will be based upon good judgment and laws that we expect to be able to follow.

And I think that Mr. Chairman had touched upon some of the other issues on the policies and clarification of the guidelines of the sales and handling of firearms relative to hobbyists, and those folks, so I won't take any time to do that.

But I do notice that a lot of the concerns that we do have has been based upon lack of resources and things like that. But I just wanted to say that we as Congress have also been part and parcel of providing the appropriate resources in the past, and I am very glad that this past year that we have had an increase, and I think that that bodes well for all members of this subcommittee that we can have an expectation on increasing staffing, increasing in training, and I think that that was a lot of concerns around that. And a lot of this is because we are able to hire more folks to do the things that is expected of your Department.

So, you know, I see that we are making progress on sexual assaults on college campuses, and with the ATF, there is a lot of clarification on the kinds of priorities and policies that is going to be promulgated by the ATF. And also in terms of law enforcement hiring overall, there is going to be increase in that. So I think that there should be an expectation of meeting some of these needs, and I am very gratified to see COPS coming back.

I think COPS has a basis for improved community and police force relationships, that they understand working in conjunction with the communities is beneficial for everybody around, and we will learn a lot from them.

#### HUMAN TRAFFICKING AT THE SUPERBOWL

One of the questions I wanted to sort of formulate is around human trafficking, and cyber systems, and cyber stalking. We just finished the Super Bowl in Santa Clara County. And the Super

Bowl was the culmination of a lot of work that has been done by different agencies. I noticed that each department that is involved in providing services to make sure that we have a safe environment and successful outcome of a activity like Super Bowl, which the next one will be in Houston, I believe.

Mr. CULBERSON. Yes, it is.

Mr. HONDA. And so over the last couple of years and this year, we have been looking at the services that is expected in terms of providing a safe environment. And so I just wanted to have some sort of comment about budget, personnel, assignments, in such a way that you can provide those services without having to juggle the different Departments' budgets so that in the next Super Bowl in Houston, it will be run smooth and seamlessly through our agency so that Congressman Culberson can expect the Houston Super Bowl to come out well as it did this past year.

I do not care who the team is, but I hope that it is the 49ers. But the basic question is can you give us some feedback on the budgetary approach to providing the necessary resources and personnel to address the kinds of expectations that one would have having a safe environment at the next Super Bowl?

We have a template and we have folks who have been involved in it that we can touch bases with to ask that question, and I will be asking that question of every department, Federal, local, and State, so that Houston will have a good solid preparation for—in the event that whatever team goes to the Super Bowl will have a good outcome. And I think the two things that are very prominent in the planning would be human trafficking, and cyber security and cyber stalking. Do you have any comments relative to that?

Attorney General LYNCH. Yes. Thank you. Thank you. Those two important issues actually do collide at an event like the Super Bowl, or the Olympics if we were to host it here again, it would be a similar situation certainly. And I thank, not just you, Congressman, but this Committee for your support of the Department's efforts in human trafficking. I know it is an important issue for you, and your efforts have really made a difference in the lives of people. So I thank you and the Committee for your support over the years, and in this most recent budget as well.

So with respect to human trafficking, I think the request is about 89 million—89.3 million for 2017, with 45 million going for the victims of trafficking program, and for cyber we are asking for a total of 121 million which would increase positions. The FBI would receive funds to enhance their investigative personnel and the number of cyber investigations, and also attendant money to increase DOJ's internal security, DEA's internal security, and our grants as well.

With respect to a specific event like the Super Bowl, I would request the opportunity to come back to you and your staff with more specific information on that. But what I can tell you at this point is that for the Super Bowl in particular, and other large events, what happens at the planning stage is a great deal of coordination between the Department of Justice, Department of Homeland Security, as well as the intelligence communities so that we mitigate security threats.

## HUMAN TRAFFICKING TASK FORCES

For human trafficking in particular, every U.S. Attorney's office now is required to have a human trafficking coordinator and be part of a human trafficking task force. This pulls in our state and local partners and helps us get information on the current state of affairs involving cases and investigations, but also things that are about to occur as large events like the Super Bowl are put together.

So prior to an event, for example, the Super Bowl was in New Jersey a few years ago, my office, when I was in the U.S. Attorney's office there, was involved, along with the U.S. Attorney from New Jersey, with the preparations for those events. And so months before the actual game is played, the planning for how to both have a law enforcement presence and also protection for any victims that we may be able to rescue, begins to occur, in terms of every agency involved, looking at the resources they would need. This is another example, also, of how we work so well with our state and local counterparts because so much of the work for an event like that will depend, of course, upon working closely with local law enforcement also as well as providing resources from FBI, from DEA if we feel that narcotics will be involved.

And where we have had, for example, situations where we have increased funding to our human trafficking task forces, we use the information and intelligence gathered from them also. So I would appreciate the opportunity to give you more specific information about a specific event as that comes to fruition.

We do have, as you mentioned, templates for how the security protocols are put together for that. We feel confident that we can take them to Texas and receive as warm a reception as we did in New Jersey, and San Francisco, and making sure that the event is as safe as possible. And also that it is not used, as these events often are, as a cover for illicit activities such as human trafficking.

So I would appreciate the chance, if I could, to come back to you with that. But again to note, that the human trafficking task forces begin to focus on these events months before they actually come into fruition, and specific plans are set in place, and specific operational plans are set in place.

Mr. HONDA. Thank you.

And I also want to add my thanks to the Chairman for helping us fund and put into law the establishment of the Human Trafficking Survivors Advisory, which is going to be very helpful, and also look forward to hanging out with the Chairman when that event comes around. I am sure it will be a lot of fun. I didn't watch the Super Bowl, I was at the Command Center watching the other stuff. So I figured, OK, the next Super Bowl, I will come over and visit with Houston and Mr. Chairman.

Mr. CULBERSON. We will be glad to have you. Get you out to the Johnson Space Center.

Mr. HONDA. Thank you.

Mr. CULBERSON. Thank you very much, Mr. Honda.

Mr. JOLLY.

Mr. JOLLY. Thank you, Mr. Chairman.

Ms. Lynch, just three very specific questions and if any of them need to be taken for the record, that is fine.

## BUREAU OF PRISONS STAFFING

The Bureau of Prisons staffing request is down about \$200 million, and there is also I think plans to hire a little over 300 positions in fiscal year 2017. We have heard concerns from some of the prison locals, some of the employees about the use of augmentation and what that means for frankly their own security, but also their own operational abilities. Can you provide some perspective on the decrease in the funding request, what it means for additional hiring, and the process of using augmentation?

Attorney General LYNCH. With respect to the Bureau of Prisons and the funding, again, as I think I discussed with another one of your colleagues, I think maybe Mr. Rogers, the budget numbers are certainly lower than the request for last year, because again we did receive the \$444 million for construction funds that we did not need to ask for again this year, that would not have been an appropriate request. So the amount may be lower, but those funds are being used to alleviate overcrowding and building the new position.

So the operations of the Bureau of Prisons are not being cut. Our overall numbers are going to be requesting not only additional new positions, but additional funding to support those new positions.

A lot of the new positions will be in the correctional area, but they will also be in the mental health area, because this is a problem that is cutting through all of our prisons. This is a problem that again I hear from my state and local colleagues, is that dealing with individuals who present these issues raises safety concerns for the inmates and the officers, as well as operational concerns.

Mr. JOLLY. So reliance on augmentation, though, to what extent are you relying on that compared to even more than the 336 positions that may be hired?

Attorney General LYNCH. Can you give me some context? I am just not sure what you are referring to.

Mr. JOLLY. In terms of reassigning duties of individuals to support those of say full-time security officers at facilities. We hear from several prison locals about the concern of using employees that perhaps are not as trained or at least well trained in certain specific tasks within the prison system, that they are being asked to fill in for those duties, and it has raised concerns of security for some of the prison locals.

Attorney General LYNCH. Well, with respect to that specifically, I do not have information for you at this time, but I would be happy if we could have our staffs talk and perhaps get some perspective on this, so we can provide you with some information for it.

I will say that I have had the opportunity to meet with the heads of the correctional officers' unions for the Bureau of Prisons and I am tremendously happy to work with them on a number of recommendations within the prison. And so their concerns are very important to me, because they do impact safety throughout the institution.

## FEDERAL PRISON INDUSTRIES

Mr. JOLLY. Two remaining questions. The next one is Federal Prison Industries, the program that allows inmates to work in the production of supply goods for other federal agencies in return for a stipend. What is the maturity of that program? Is there additional capacity, are there additional savings for other federal departments that could perhaps be relying on this? What is the state of play for Federal Prison Industries?

Attorney General LYNCH. Well, thank you for the chance to talk about Federal Prison Industries, because it is actually I think one of the ways in which we can not only provide our inmates with job training and job skills, but also help their reentry platform out back into the community. Because we have had some situations where employers have connected with Federal Prison Industries and find that they receive not only well trained individuals, but incredibly loyal people who appreciate being given a chance to use their skills and become productive members of society. And so we are very supportive of that.

As I am sure the Committee is aware in general, Federal Prison Industries provides a wide array of services. Frankly, the Department of Defense is a huge purchaser of Federal Prison Industries' products, I think they have been very pleased with their products as well. It's no longer mandatory that Federal agencies use them, but certainly we are encouraging our fellow agencies to consider them and looking to actively partner with other agencies to help in that effort.

With respect to the current state of the operation, we are very, very pleased to note that we have recently brought a new CEO on board who comes with over 20 years of experience in private industry, and he is very excited about the prospects of rebuilding this great program and in, frankly, enhancing this great program. So I am tremendously looking forward to working with him as well.

Mr. JOLLY. OK.

Attorney General LYNCH. And we think——

Mr. JOLLY. I am about out of time, I want to get one more question on the record. I appreciate that, I look forward to working with your department on that as well.

## CYBER SECURITY

We provided language in last year's bill regarding digital rights management for information security, secure content management. And I know there have been incidents, including last calendar year, where the identity of FBI agents and some DHS personnel was released. If you could just provide some perspective on where the Department is with secure content management, plans going forward either in your budget or unmet needs.

Attorney General LYNCH. Thank you. You know, with respect to that issue, it is very important to us, because the release of personal information for anyone, the citizens or someone who is a law enforcement officer, carries with it grave risks and certainly with our law enforcement officers the risks are enhanced. And we in fact are involved in prosecuting individuals who have released informa-



tion at the behest of designated terrorist organizations. And so it is something we take very, very seriously.

Certainly with respect to the cyber budget overall, we have a larger number in there, \$121 million, but what I would note is that within that we are requesting for \$26.4 million to strengthen DOJ's own cyber security environment to protect against insider threats and also to bolster literally the physical security of our systems.

We are all—when I say we, I now refer to a number of other agencies, but we are all at a point where we are dealing with the greatest of the last century's technology in many ways. Well put together, well maintained by dedicated staff, but systems are approaching end of life, systems are changing, the costs of maintaining the systems are growing. So I will tell you that the Department of Justice is committed to this, but looking for ways to make sure that we have the most efficient systems possible is included in this budget request as well.

#### FEDERAL PROCUREMENT

Mr. JOLLY. Do you have flexibility to move quickly on outside vendors? You know, I also serve on the VA committee and this is one of the huge issues when it comes to scheduling and how much is done in-house and whether or not there is commercial off-the-shelf available that can quickly be incorporated in an environment that continues to so rapidly change that it creates new vulnerabilities every day. Is there a balance between what you are doing in-house and relying on solutions, technology solutions that are out there right now, today, in corporate America?

Attorney General LYNCH. Well, we certainly try and find that balance. Obviously, we have to go through the Federal procurement process, but we are allowed to use a variety of vendors if they meet those needs. The process can be somewhat lengthy, but it is there for a reason, as I am sure you know. I think the VA is an excellent example of all the issues that we are discussing here. And so I look forward to working with you to ensure that the Department of Justice can also be in that stream of improving our technological capacity.

And whether or not, Congressman, we can use off-the-shelf products really depends upon the type of system that we are talking about also, I will say that. Certainly when it comes to case management, for example, managing data for the lawyers who are litigating our cases, there are several excellent programs that we are able to incorporate into the Department of Justice systems. When it comes to managing secure data, you know, our national security data, there are not.

Mr. JOLLY. Sure.

Attorney General LYNCH. Not to say that there are none, but there are just fewer options. And so a lot of that will depend on the type of system that we are talking about as to our ability to use outside vendors.

Mr. JOLLY. All right. Thank you.

Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Jolly.

I want to recognize at this time our ranking member, the young lady from New York, Mrs. Lowey.

Mrs. LOWEY. Well, thank you, Mr. Chairman.

And I would like to join my colleagues in welcoming our Attorney General here with us today. I apologize, but the Secretary of State was next door. So we are moving quite efficiently and I hope effectively. Thank you so much.

#### ATF FUNDING AND STAFFING

I have a question regarding the ATF funding proposed in the President's budget. The budget request includes funding for additional ATF agents to help investigate gun crimes and strengthen the firearms background check system to ensure that firearms are not inadvertently sold to persons who are legally prohibited from obtaining one.

In addition, the request includes funding to improve the National Integrated Ballistics Information Network to help law enforcement solve firearm crimes.

Many members of Congress often express opposition to new gun restrictions by saying that we need to do a better job enforcing the gun laws that are already on the books. Isn't it fair to say that the budget initiatives that you are requesting for fiscal 2017 are designed to do exactly what so many in Congress say they want to do, and that is to enforce the gun laws that are already on the books by helping State, local and Federal law enforcement prevent gun crime and apprehend and prosecute those who violate firearm laws?

Attorney General LYNCH. Thank you for the question, Madam Congresswoman.

Yes, indeed. Certainly as the Department of Justice was looking at the recommendations to make to the President most recently, our mandate was exactly that, to view existing firearms laws and determine how we could best marshal and leverage Department resources to better protect the American people within that framework of laws.

So as you have noted, we have taken some steps and we have some requests for ATF funding that would increase positions, as well as increase funding. This funding would allow us to bring on board 200 additional personnel, 80 of whom would be agents, 120 would be what are called industry investigators or Industry Operations Investigators, to support our new review on those who are engaged in the business of dealing in firearms. The Special Agents would be working on violent crime issues, trafficking cases and the like. They would enhance our efforts in reducing violent crime across the country, again, using the existing laws.

Certainly the NIBIN network has been of great use to law enforcement over the years. The sharing of information at the Federal, State and local level about ballistics being used in crime have been extremely successful.

And the other initiatives that we propose would also enhance our ability to detect when guns are lost or stolen in transit much earlier, as those guns tend to be used in crimes. We have seen that in terms of firearms recoveries from crime scenes. And so having the ability to start those investigations earlier would also enhance public safety.

So indeed, the recommendations that we made are designed to tackle these difficult issues of both violent crime and also keeping guns out of the hands of those who are not authorized by law to have them. But at the same time strengthening the background check system called the NICS system, so that the licensed dealers who rely on that system to comply with the law have the best and most efficient system that they need. And so that individuals who are also relying on that system as they go through a routine firearm transaction, a purchase transaction, will have the best and most efficient system as well to rely upon as they go about their business.

#### NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Mrs. LOWEY. I appreciate your mentioning the NICS system, because I just want to follow up on that issue.

We know that current law prohibits individuals from buying a gun if because of a mental health issue they are either a danger to themselves or others or are unable to manage their own affairs. The Social Security Administration has indicated it will begin the rulemaking process to ensure that the National Instant Criminal Background Check System, the NICS system, receives all appropriate information on the tens of thousands of persons who are found each year to have a documented mental health issue, receive disability benefits and are unable to manage those benefits because of mental impairment.

If you could just give us an update on this effort, including the Justice Department's efforts to assist the Social Security Administration in helping to ensure that persons with serious mental impairments do not have access to firearms.

Attorney General LYNCH. Well, thank you, Congresswoman, for raising that important issue as well.

Certainly the law does prohibit individuals with certain types of mental illnesses from being able to purchase firearms and there are very specific delineations of the adjudications that are required to meet that. Also, every Federal agency is required to provide information into the NICS system that would assist the NICS system in being as complete as possible.

The Social Security Administration is engaging in this rulemaking so that they can in fact produce a clearer, legally consistent definition of which types of individuals and which types of adjudications involving their mental health would be required to be turned over to NICS. And the Department's role, as with all rulemaking, is to provide legal assistance and clarity as the Social Security Administration goes through that process.

They will essentially craft a rule, it will go out for public comment. Those comments are received back and the agency, the relevant agency, in this case SSA, would provide a response before any rule would be promulgated. But it is designed to make sure that the individuals who fall in that category are those that are clearly connected to the legal prohibition against being able to buy or maintain a firearm.

Mrs. LOWEY. Thank you very much.

Mr. CULBERSON. Thank you.

Judge Carter.

Mr. CARTER. Thank you, Mr. Chairman.

#### IMMIGRATION JUDGES

You know, I think you can figure out that I am the chairman of Homeland Security Appropriations Committee by the comments of the chairman. The DHS has been doing all we can to catch and investigate criminals, illegal aliens and smugglers that are pouring across our southern border. As the chief law enforcement officer of the land, you must do your part and follow through with the prosecutions and consequences.

In the past two years, you have requested and received increased funding for immigration judges. Mind you, these are courts used 99 percent of the time by foreigners who are seeking an immigration benefit, yet still we fund them through taxpayer dollars.

Why are we not placing these immigration judges on the border where the rubber actually hits the road? Why do our wait times increase, even though we are increasing the number of immigration courts? And why does my staff report sitting in immigration hearings only to see case after case administratively closed, allowing thousands to circumvent immigration enforcement?

Would you like to answer those questions?

Attorney General LYNCH. Well, thank you for raising this important issue, because as you note managing the immigration caseload is one that has become increasingly challenging for all of us, those who are involved in interdiction at the border, those of us who are involved in prosecuting the cases that arise from that. The Department of Homeland Security as well as they deal with not just deportation, but managing all of the issues that flow from that. And so I thank you again for your commitment to that issue as well.

Certainly with respect to our immigration judges, as you indicate, we have received increases over the last two years for the hiring of more immigration judges. And let me thank this Committee for recognizing the need for hiring more immigration judges and express the Department's appreciation for your support with that.

Certainly with respect to the total Office of Immigration Review, we are in fact requesting additional funding, but no new judges this year. Because we have brought judges on board, we are in the process of hiring more using the funds that were provided to us, and the additional funding that we are requesting is to make sure those judges are up and running. As you indicated, there are often long waits, they are often crowded courtrooms. And so we are using the additional funding request, or the additional funding request would be used, I should say, to support the infrastructure for those judges. And so we want to be responsible with our request and fully integrate those judges and continue hiring using the money we already received.

With respect to immigration judges on the border, we have tried to be flexible with regard to that. Certainly within the last year or so, it may have predated a bit my time as Attorney General, but as I am sure you will recall from dealing with the Homeland Security issues, we have waves of individuals coming across the border at different times and the composition of the groups will change. For example, when we have large numbers of unaccompanied children and very young people coming across the border, in fact what

the Department of Justice did was temporarily reassign some immigration judges to the border areas to handle just the influx of cases there.

And we look forward to continuing to be responsive in that way, so that we could deploy judges to those areas where their colleagues would be overwhelmed. And we hope that the 20 new judges that were hired last year will go a long way towards that. And we have additional hiring planned, as I mentioned, with the money that was already appropriated.

So again, we feel that we can be flexible and we look forward to continuing to be flexible. If there were to be a crisis again in another portion of the country, not the border, but maybe the north-west border, for example, or the northern border, we would again use that flexibility to make sure we could staff up those judicial offices so that their colleagues would not be overwhelmed.

And so that is how we would intend to deal with that again, but we are requesting additional funding so that we can bring on board the judges. And we do appreciate this Committee's support of the efforts of the Office of Immigration Review.

#### UNACCOMPANIED CHILDREN

Mr. CARTER. Within the last four months, and we have had a sudden drop-off this month, but over the last four months our numbers on the UACs, the unaccompanied children, have gone right back up to 25 or 30,000. It is really unusual at this time of the year. Those of us who have lived in Texas and know what goes on at the border because we have lived with it all of our lives, when it gets cold, people do not come across the river, when it gets warm, people come across the river. It is just pretty simple, it is cold to get wet.

And so the situation is, this is contrary to what we would expect. This means that there is something driving people up here. If we cannot get them before an immigration judge hearing, if we give them the notice to appear, they are then picked up by another federal agency and transported God knows where in the United States. It could be all the way to Maine, Washington State or the tip of Florida. We do not know where they are going. With a notice to appear, the chances are, especially since most of the children that we are calling children are 14 to 17 years old, that is the highest number of category that are coming up as unaccompanied, quote, "children." By the time they get reached, there is a good chance they will be adults. OK? We have got to fix that.

And I know you are trying. And, if you ask for more money for judges, I personally will give it to you, because I truly believe the solution is bringing them before a court of jurisdiction and have a real hearing, not an agency and a bureaucrat.

So thank you for what you are doing. Ask for it and I personally will be on your side.

Attorney General LYNCH. Thank you, sir.

Mr. CULBERSON. Thank you, Judge.

I recognize the gentleman from New York, Mr. Serrano.

Mr. SERRANO. Thank you so much.

Thank you for being here with us and congratulations on being our Attorney General.

## VOTING RIGHTS

You know, when I first came from Puerto Rico as a young boy and I started paying attention to what was being discussed in my house, it was at the beginning of the civil rights movement and it was whether Puerto Ricans could vote in New York or not. And both movements had something in common, which was voting rights. In our case, it was whether we took a test in English or in Spanish. That was settled by the courts.

Lately, many of us, as you know, have felt that we are making it harder for people to vote, not easier to vote. And that brings me to the question of what happened with the Election Assistance Commission where a commissioner wrote to some states and said you cannot ask for citizenship. That has always troubled me because, you know, in my case and in the case of many other people, we do not walk around with proof we are citizens. That is just the way it is.

In fact, this voting card is probably—my congressional voting card is probably the only proof I have on me that I am a citizen, because we would assume that all members of Congress are citizens of this great land, but that is it.

And so my question to you is, what role is the Justice Department playing on that particular issue with that commissioner from the Elections Commission? Do you feel that he had a right, without giving me a judgment if that is what the case would be, to write that letter?

And lastly, very briefly, what in general are we doing to protect people's rights to vote? Because it seems to me that at this time in the history of our country to be fighting the voting rights issue all over again is a very sad state of affairs.

Attorney General LYNCH. Well, Congressman, with respect to the specific case that you raised, it is actually currently in litigation. Typically, it is the Department's responsibility to represent Federal agencies. We do advise all of our client agencies on the applicable laws and issues that are raised by their actions. And with respect to this case, it is currently in litigation, so I am not able to give you specifics on that. I think that there is a judge who is going to be holding a hearing soon to review whether or not there is a legal basis for certain actions. And so I will leave that matter there.

With respect to voting rights in general, it is in fact one of the Department's priorities to make sure that we fully enforce all of the relevant and applicable laws that protect the rights of everyone to vote. Certainly there have been changes in those laws recently with respect to the Voting Rights Act itself. Pre-clearance is no longer an option or a tool that we have, but that does not diminish the Department's resolve and commitment when issues are brought to us of where we do not have pre-clearance eyes on something where there is evidence of irregularity or issues arising later in the process of starting investigations and working there.

And I would note that this is also an important issue in the field with respect to the U.S. Attorney community also. They are very concerned at the local level as to whether or not there would be any irregularities with voting and are very focused on that.

So we are very committed to protecting the right to vote for all Americans and making sure that it is exercised in as free and open a way as possible. We provide guidance to States. Some States do come to us and ask us questions about changes, we still do that, and we will consult with them and have had very positive dialogues on specific issues about the best way in which to ensure an open right to vote. And where necessary, we will litigate those issues also and then we will let a court decide.

But where we feel that the right to vote is being infringed in a way that is inconsistent with the values of this country, which is that every American needs to participate in this democracy of ours, we will bring those actions as well.

Mr. SERRANO. In the time that I have left, I know you cannot comment on litigation or something that is being litigated, but are you at liberty to comment on whether it is true or not about the rumor we hear that the Justice Department has asked the judge for a stay on the sole issue of—by the Elections Commission?

Attorney General LYNCH. Well, I think that the pleadings have been filed now and I think that the plaintiffs did ask the court for an injunction. I think the matter is under consideration now.

Mr. SERRANO. Thank you so much.

And thank you, Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Serrano. I appreciate very much your focusing on making sure that every American has a right to vote and that means eligible to vote, and I deeply appreciate that.

And that you will also defend, as the Department always has, Federal agencies and, therefore, you will be defending the Federal Elections Commission. I think that is really important and I appreciate that very much.

I want to recognize Mr. Kilmer and then I believe we are going to wrap up.

Mr. KILMER. Thank you, Mr. Chairman.

#### 21ST CENTURY POLICING

I am grateful that the President established the task force on 21st Century Policing to provide a roadmap on how to build trust and incorporate best practices to reduce crime and make sure everybody is safe. And I know that the task force made several recommendations that were specific to the LGBTQ community and making sure that everyone is safe.

I know the Department is taking the lead on promoting the adoption of those best practices and those recommendations. I was hoping you could just give an update on how that is coming and what the strategy is for getting these measures adopted nationwide.

Attorney General LYNCH. Yes, thank you. This is an important area. It is essentially an area in which some of our most vulnerable citizens have often either felt that police protection did not extend to them or they were reluctant to seek police protection because of a view that they would not receive it. And so it is also an area that, frankly, when I talk to law enforcement, they do not want anyone feeling that you cannot call on an officer for help.

And so we have tried to provide guidance, we have tried to provide training on how to deal with individuals who are in this vulnerable situation, either under attack or under assault. We have

tried to provide training in dealing with individuals who present issues of gender identity, so that police officers have the training that they need to recognize the issues that come from that, ranging from booking to housing, for example.

And so one of the things that we have done is, and I may have mentioned in an earlier response to a question, that we have recently released guidance on sexual assault and domestic violence. This guidance focused on identifying and preventing gender bias and law enforcement's response to domestic violence and sexual assault. And we have consulted closely with State and local law enforcement, both for their experiences and the questions that they had also.

And so that guidance came out in December and it does identify and recommend practices that will help law enforcement agencies develop best practices to respond to crimes of violence, not just what people traditionally view as domestic violence against women or sometimes men, but also the LGBTQ community, to recognize those symptoms and to be able to respond to those individuals.

And the guidance also seeks to make sure we have ways to connect law enforcement with a very, very important part of the community when it comes to all types of domestic violence, which is other agencies and resources, often community resources or non-governmental agencies or NGOs, that can provide support for victims of domestic and sexual violence.

Mr. KILMER. Thank you for that.

#### SUPPORT FOR VETERANS

With the time I have left. I represent a district that has a large Navy base and I think I represent more military veterans than almost anybody in this place, and I feel very lucky about that. And I fundamentally believe, if you serve, we should have your back. My State's Human Rights Commission has had to meet a surprising number of instances where service members or veterans have voiced concerns around housing or employment discrimination.

I know the Civil Rights Division under your jurisdiction deals with those issues. And I want to just get a sense from you whether it is properly resourced to deal with the needs of service members and veterans in this regard, and what sort of demand you are seeing for those services and the ability of the division to meet that demand.

Attorney General LYNCH. Well, I want to say that I certainly agree with you in the fact that I think we owe our veterans the greatest support when they return home, be it an issue of health or be it an issue of services, or the all-important right to vote when they are also stationed overseas. Because one of the things that we do in the Civil Rights Division is have a very active practice in making sure that service members who are stationed overseas have the information they need to know how to vote and that that particular right is not infringed through a logistical problem or some other issue. We do enforce the Federal laws that help them also return to their workforce when they come home from military duty.

And also we have seen a number of disturbing cases that involve financial exploitation of our service members, both when they are



coming back and trying to seek housing, and also while they are on active duty, of service members and of their families. We have seen some unfortunate instances where that type of fraud is growing and that is a matter of grave concern to me as well.

And we also have issues of course with many of our service members returning injured. Some of these injuries are visible, some of them are not visible, but it presents them with a disability that gives them special needs in terms of housing and employment. And so we take very seriously our responsibility to defend their right to those reasonable accommodations as well.

Currently, the fiscal year 2017 budget includes a total of 4.1 million in resources, which is going to plus up the service members civil rights cases work by a little over \$580,000.

We also have a service members initiative at the Department of Justice that is led by my outstanding Associate Attorney General. And it really has been instrumental in making sure that we at the Department look at all of the issues that our service members present and make sure that, whether it is not just civil rights, but other areas also. I mentioned the fraud cases growing, that the Criminal Division is cognizant of these issues as well.

And so we are trying to look at all of the issues presented by our service members and be responsive.

Mr. KILMER. Thanks. We would love to follow up with you on that.

Attorney General LYNCH. Yes.

Mr. KILMER. Thanks.

Thank you, Chairman.

Mr. CULBERSON. Mr. Kilmer, thank you. Committee members, thank you.

And above all, Attorney General Lynch, I want to thank you for your service to the country and in keeping us all safe, and for your cooperative relationship with this committee, it is deeply appreciated, in ensuring that Americans can sleep soundly at night knowing that the Department of Justice and their local and State law enforcement officers are working together to protect themselves and their families.

Thank you very much and the hearing is adjourned.

Attorney General LYNCH. Thank you, sir.

**The Honorable John Culberson**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**Hearing on the Department of Justice FY 2017 Budget Request**

1. The request for discretionary investigative expenses under the Asset Forfeiture Program is \$20,514,000. Within this, the Department has requested \$12,214,000 to be used for Awards for Information. How much of this do you estimate would be obligated in fiscal years 2016 and 2017 for human trafficking investigations (pursuant to new authority included in the Justice for Victims of Trafficking Act of 2015)?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

2. Given the increase in the number of children appearing before EOIR judges, how does EOIR prepare them to adjudicate such cases, which may entail special requirements? This could include training on forms of relief, specialized approaches to questioning or interviewing, the impact of trauma, and other relevant child development considerations.

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

3. What is the budget and staffing for the Human Trafficking Prosecution Unit, part of the Civil Rights Division, for fiscal years 2015-17? Please describe recent performance, to include the number and type of cases prosecuted in the past three years, and priorities for prosecution and coordination of enforcement. In addition, please describe the types and amount of training provided to Federal, State and local prosecutors and law enforcement for different types of trafficking, as well as for victim restitution.

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

4. Please describe the process, if any, by which the Department coordinates with the Department of Homeland Security in providing letters of support for survivors with T-visas whose criminal cases are closed.

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

5. Please describe the work of the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) to strengthen international efforts to stop and prosecute trafficking.

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

**The Honorable Hal Rogers**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**Hearing on the Department of Justice FY 2017 Budget Request**

1. Prosecution of Doctors by U.S. Attorneys

On February 5<sup>th</sup>, a California jury made history by convicting and sentencing a doctor for murder after overprescribing drugs – the first verdict of its kind in the U.S. Specifically, Dr. Lisa Tseng was sentenced to 30 years to life after using her husband's name to prescribe double quantities of pills and occasionally fabricating medical records to justify her prescriptions. 12 of her patients died, though this particular case only concerns three patients. Given the precedent that this California case could set, how is DOJ preparing its U.S. Attorneys to investigate and prosecute similar cases throughout the country?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

**The Honorable John R. Carter**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**Hearing on the Department of Justice FY 2017 Budget Request**

1. Please provide a detailed accounting of the civil and criminal forfeiture amounts derived from the following deferred prosecution agreements:

- *U.S. v. Lloyds TSB Bank PLC*, 1:09-cr-00007 (D.D.C. 2009)
- *U.S. v. Credit Suisse AG*, 1:09-cr-00352 (D.D.C. 2009)
- *U.S. v. Barclays Bank PLC*, 1:10-cr-00218 (D.D.C. 2010)
- *U.S. v. Standard Chartered Bank*, 1:12-cr-00262 (D.D.C. 2012)
- *U.S. v. ING Bank, N.V.*, 1:12-cr-00136 (D.D.C. 2012)
- *U.S. v. Crédit Agricole Corporate and Investment Bank*, 1:15-cr-00137 (D.D.C. 2015)
- *U.S. v. HSBC Bank USA, N.A. and HSBC Holdings PLC*, 1:12-cr-00763 (E.D.N.Y. 2012)

- *U.S. v. The former ABN AMRO BANK N.V., now known as The Royal Bank of Scotland N.V.*, 1:10-cr-00124 (D.D.C. 2010)
- *U.S. v. Commerzbank AG and Commerzbank AG New York Branch*, 1:15-cr-00031 (D.D.C. 2015)

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

2. To which Treasury funds have these civil and criminal forfeiture amounts been transferred?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

3. Are these amounts classified as mandatory or discretionary?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

4. Which office oversees and manages the monies from these criminal and civil forfeitures?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

5. What is the present status of these criminal and civil forfeitures and what is the plan for the use or distribution of these monies?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

**The Honorable Jaime Herrera Beutler**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**Hearing on the Department of Justice FY 2017 Budget Request**

1. Following the arrest and prosecution of MyRedbook founders and seizure of the MyRedbook domain and assets, is the Department of Justice looking at pursuing federal criminal prosecutions of similar online classified sites that facilitate and/or promote sex trafficking of children and adults, such as backpage.com?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

2. To what extent are resources being committed to training federal prosecutors on investigating—including working with federal, state and local law enforcement on sting operations—and prosecuting those who create demand for sex trafficking victims, in particular buyers of sex acts with minors?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

3. What is being done to promote trafficking victims' access to restitution in federal prosecutions? In a recent study by the Human Trafficking Pro Bono Legal Center, mandatory restitution in human trafficking cases is not being consistently requested and/or awarded to human trafficking victims. Since restitution is a critical resource for funding survivors' restoration and preventing re-victimization, are resources being directed to train federal prosecutors on requesting and arguing for victim restitution in human trafficking cases?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

4. In instances of sex trafficking, investigations only take you so far: ultimately you need prosecution of buyers of sex. In many districts it is difficult to get prosecutors to accept prosecution. Does DOJ track the number of the U.S. Attorney's Office declinations nationwide on these matters and if so does it break it down by type of offenders? If this has been identified as a problem, is there national coordination to reduce the number? What is the percentage of cases declined by the USAO in favor of state prosecution?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

5. When a buyer of commercial sex is caught and convicted, are they required to do sex offender counseling? Are they monitored after release from prison?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

6. If a child victim of sex trafficking needs a safe house how is that funded? Who has access to that funding to provide housing? Is it available at the local level?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

7. An issue of great concern for my local jurisdictions is that of the suspension of the equitable sharing program. It is my understanding that this is a temporary suspension. When will payments resume?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

8. I've heard from small communities in my district about how burdensome it is to apply for Byrne grants and to administer them. These are small communities with limited resources. However, regardless of the amount of funding, the application requirements are the same for all task forces. Task forces in small communities really need - and could benefit from the grants - but they are also typically the task forces that have minimal staffing to begin with. This process requires staff to spend days gathering stats, and writing lengthy narratives, and it also means they have to remove someone from an already overburdened Patrol staff to fill out grant paperwork. Is this an issue you're aware of and are there any measures put in place to help smaller communities be competitive for grants, or is DOJ considering ways to make this process easier for smaller communities?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

9. Also related to Byrne, do you report back to applicants as to why they didn't receive the grants?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

**The Honorable Steven M. Palazzo**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**Hearing on the Department of Justice FY 2017 Budget Request**

1. In the Department's budget request, there is an additional \$8 million in grants to the Body-Worn Camera (BWC) Partnership Program, covering up to half the cost of purchasing body-worn cameras for state and local law enforcement. The majority of the law enforcement officials that I've met with in my district are in support of body-worn cameras. One of the concerns that they have expressed to me, however, is in regards to the storage, and maintenance of this technology and the data that it collects. What is the Departments recommendation regarding data storage? Is the film taken by these cameras to be kept indefinitely, lest a criminal or civil case arises from a particular incident captured by the film?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

2. What, if any, portion of the Body-Worn Camera Partnership Program can be used to help purchase equipment to store the data collected from the cameras?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

3. Furthermore, will the Department offer BWC training for local law enforcement who requests it?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

**The Honorable Michael M. Honda**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**Hearing on the Department of Justice FY 2017 Budget Request**

1. The Department of Justice's budget request for 2017 proposes a substantial drop in funding from the of Crime Victims Fund, potentially setting back efforts to direct more VOCA funds to help victims who are elderly, persons with disabilities, LGBT victims, Native Americans, and other underserved groups. The 2015 increase provided an unprecedented opportunity to extend such critical services to previously unserved or underserved groups. What is the justification for the proposed reduction at this critical time?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

2. There is a lot of activity around the country regarding civil asset forfeiture reform, which recognizes that the vast sums of money being seized and directed to law enforcement can distort policing priorities. In my own state of California, there are continuing efforts to protect innocent people from the loss of cash and property, but there are concerns that the United States Department of Justice is working with police and sheriffs against such efforts.  
 Will the Department of Justice remain neutral and impartial on efforts by state lawmakers to reform their civil asset forfeiture laws?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

3. What percentage of background checks initially delayed for processing are either approved or denied by analysts within three days?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

4. Of the cases that are approved or denied within three days, how many and what percentage are denied?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

5. Of cases that are resolved within three days and are denied, what is the breakdown of the prohibitory reason for these denials by category?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

6. What is the average time it takes to resolve a NICS check that is not completed within three days?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

7. Of NICS checks that take more than three days to complete, how many and what percentage ultimately turn out to be denials?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

8. Of cases that take more than three days to complete and are ultimately denied, what is the breakdown of the reason for these denials by category of prohibited person?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

9. How many and what percentage of background checks that are initially delayed remain incomplete after 30 days?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

10. Please describe the actions taken by your agencies once it is determined, after the three-day period, that a transaction should have been prohibited but the Federal Firearms Licensee (FFL) already elected to and in fact transferred the firearm?



[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

11. What is the success rate of ATF in retrieving firearms in such circumstances?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

12. What is the average time it takes to retrieve these firearms?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

13. How many firearm retrievals take place more than 30 days after such transfers?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

14. Are NICS checks in states that have fully automated records quicker than those in states that have higher percentages of records that must be manually accessed in order to complete checks? Do states in the latter category have a higher percentage of NICS checks that take longer than 30 days to complete?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

15. Last year, the Committee included report language instructing the Department of Justice to "intensify its efforts to combat" instances of "severe harassment, stalking, and threats transmitted in interstate commerce in violation of federal law." What efforts has the Department made to fulfill this mandate and increase investigations and prosecutions of these crimes?

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]

16. Please provide the number of investigations and prosecutions the Department conducted for violations of 18 USC 875(C) and 18 USC 2261A(2) for FY15 and FY 16.

[Clerk's Note: The Administration was either unable or unwilling to respond to this question at the time of publication of this volume.]



THURSDAY, FEBRUARY 25, 2016.

**FEDERAL BUREAU OF INVESTIGATION**

**WITNESS**

**HON. JAMES B. COMEY, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION**

Mr. CULBERSON. The Commerce, Justice and Science Appropriations Subcommittee will come to order. The Subcommittee welcomes today Director James Comey to present the President's fiscal year 2017 budget proposal for the Federal Bureau of Investigation.

The FBI Director is of course at the forefront of the news today where the topic is terrorism, cyber threats, foreign espionage, and international organized crime. The FBI is responsible for leading America's domestic anti-terrorism, counterintelligence, and national security efforts, along with your mission, Director, to combat gangs, financial fraud, human trafficking, and public corruption. Prior to 9/11 the FBI focused on investigating crimes. However today, of course, the FBI is charged with anticipating and preventing attacks from terrorists along with investigating federal crimes.

We on the Commerce, Justice and Science Appropriations Subcommittee, Director, will always provide you and your men and women who serve us and protect us with the support you need to meet the increasing demands that are placed on your fine people and resources. But as you know the committee faces unrelenting pressure to trim budgets and in an environment where essentially we are facing flat budgets from year to year and increasing pressure on our mandatory social safety net programs that have simply got to be brought under control if we are ever going to balance the Federal budget. The Committee will do everything we can to help you in that difficult environment.

Today we will probe your request, seeking assurances that our investments in the FBI will significantly improve your capabilities, will strengthen national security, and measurably reduce crime. We have the highest esteem for the FBI, Mr. Director, but the committee will not be giving any free passes for funding increases. We must be convinced that our constituents' hard-earned tax dollars are going to be used frugally and carefully to advance our highest national priorities.

Before we proceed I would like to recognize Mr. Honda, our ranking member from California, for any comments he may have.

Mr. HONDA. Well thank you, Mr. Chairman, and welcome Mr. Secretary. And I appreciate our continued work together as we enter into the third CJS hearing today and I am looking forward to pursuing our mutual interests together with all of our respected colleagues on this subcommittee in crafting a strong, bipartisan

CJS appropriations bill. And thank you, and welcome, Director Comey. It is a pleasure to have you join us this afternoon to hear your testimony and take our questions.

First and foremost I would like to say that I have a great respect for your prior statements that partisan politics should play no role in your department. And I would like to also personally thank you and the dedicated men and women at the Federal Bureau of Investigation who work tirelessly to protect the American people against threats, primarily here at home in the United States but also abroad. And I think that we all agree that the work of the FBI is vitally important to the security of our nation. But I also strongly believe that safeguarding the civil liberties of all Americans is equally as important, if not more so.

The Constitution is never tested during times of tranquility. It is during times of tension, turmoil, tragedy, trauma, and terrorism that it is tested. We must make sure that it survives these tests.

With that being said I am eager to learn about the progress the FBI is making in combating sexual assault and human trafficking and keeping guns out of the wrong hands, among other activities.

Thank you again, Director Comey, and I look forward to hearing your testimony.

Mr. CULBERSON. Thank you, Mr. Honda. It is my pleasure to recognize the chairman of the full committee, the gentleman from Kentucky, Mr. Rogers.

The CHAIRMAN. Thank you, Mr. Director, welcome to the Congress. Thank you for the work you are doing. Thank you for your dedication to public service.

Everyday the FBI is on the razor's edge in protecting our homeland from extremism, guarding against global cyber threats and espionage, and putting dangerous criminals behind bars. The world is changing quickly as new threats emerge, ones that we did not even dream of 5 years ago. The tragic attack in San Bernardino showed that those who wish to do us harm are adopting more sophisticated recruitment tools than ever before and we routinely witness the FBI rising to the challenge. And I have no doubt that they will continue to do so in the future. Your work is essential to our national security and our economy. And so this committee thanks you, Mr. Director, and your 35,000 coworkers for your dedicated service.

As with virtually every year in recent memory, we are forced here to make difficult decisions to stay within the confines of our budget parameters. Your request of \$8.4 billion is essentially flat. But many of the offsets will effectively reduce the operational capabilities of the FBI. A few problematic reductions include almost \$74 million in additional funds that we gave to you in fiscal year 2016, \$57 million for personnel, \$74 million for an operational rescission, and \$150 million in fees for IT and criminal database improvements.

While we should always be judicious on how we allocate scarce resources, we need to hear from you about why you feel these accounts are the best places to scale back. It is also as important as ever for the FBI to make the most of its local, State, and even international partnerships to ensure that every penny is spent as

efficiently and effectively as can be. These partners thrive with the support and leadership the FBI provides.

One of my highest interests, and I am sure it is yours as well, is the effort to combat drug trafficking around the world. As you know my corner of Kentucky was among the first to feel the pain of opioid addiction in the 1990s, and more recently the surge in heroin. With your success combating production and trafficking in South and Central America, and then new initiatives like your joint documentary with the DEA called Chasing Dragons, I am confident that your partnership in this epidemic will yield results. But we have got to keep our foot on the gas pedal hard.

As we discussed last year, the growing threat of homegrown terrorism. ISIS and other extremist groups have spread that poisonous doctrine worldwide through the Internet and social media. We have got to be diligent to stay ahead of the curve and I look forward to hearing your plans to stop the radicalization of American citizens. More specifically how we can be sure that the internet, this new international mode of conversation, that also allows evildoers to organize their efforts, how can we tackle that part of the problem?

I look forward to hearing from you. Thanks for coming.

Mr. CULBERSON. Thank you, Mr. Chairman. At this time it is my privilege to present our ranking member, the gentle lady from New York, Mrs. Lowey.

Mrs. LOWEY. And I would like to thank the chairman. And it is a pleasure to have you with us, FBI Director Comey. You have served this country through multiple presidents and parties so I welcome you and thank you for your service.

The internet and social media have revolutionized our economy and our way of life. They have also become the weapons of choice for terrorists to spread propaganda and recruit and radicalize followers. As we tragically witnessed in Paris and San Bernardino we are facing a new type of terror attack, including the growing threat of homegrown extremists and lone wolf terrorists. And Congress must provide the FBI with the resources to keep up with these evolving threats.

I look forward to hearing how increased funding to enhance the technical capabilities of the FBI's investigative personnel, increase the number of cyber investigations, improve cyber collection and analysis, would help meet this need.

I wholeheartedly support the administration's requested increase for the National Instant Criminal Background Check System, or NICS. Black Friday, 2015 broke records for gun sales with 185,345 background checks processed in a 24-hour period, slightly more than two background checks every second. It is clear that the FBI will need additional investments to keep up with the record breaking sales.

Last month the President rolled out his executive actions to prevent mass shootings and loss of innocent American lives. Many NRA-backed Republicans in Congress seized that opportunity to make clear they will not support any measures to implement the President's plan, including increased NICS funding to keep up with an increase in background checks. I fear this is misguided and is

indicative, I hope not, of what is to come during the appropriations process.

Despite the threats facing our nation, the men and women of the FBI put their lives on the line everyday so that we may live safely and securely. They deserve to be commended, as do you. We thank you for your service, Director Comey, and I look forward to hearing your testimony. Thank you.

Mr. CULBERSON. Director Comey, I also thank you on behalf of the people of Texas for your service and we recognize you for your opening statement. Without objection, your written statement will be entered into the record. But we would ask if you could to keep your remarks to five minutes to permit additional time for questions.

Mr. COMEY. Certainly.

Mr. CULBERSON. Thank you, sir.

Mr. COMEY. Thank you, Mr. Chairman, Chairman Rogers, Mr. Honda, Mrs. Lowey, thank you for having me here. Again, it is a pleasure to be before you. Thanks for your good words about the people of the FBI because they are the magic of the organization I am lucky enough to lead. I always tell them we do not have a lot of fancy stuff, but we have great people. Moments before I got in the car to come here I welcomed 170 new employees who are joining us from all over the country. They come together to make sure that we are knitting them to a common culture, including our ethics and integrity responsibilities. And I said to them, I hope you did not sign up here to get rich. This is not about the money. I do not believe the FBI is something you do, I actually think it is something you are. It is an orientation towards life and towards service. So thank you for your support of our folks. It makes a big difference.

I just want to say a few words about stewardship. I am very proud of the way in which the FBI has acted as a good steward of the taxpayers' money in the United States during my two and a half years as Director. In particular, as I told you, we tried to be very conservative my first two years on this job in what we asked for. And I promised you that if I really needed more dough in areas, I would come and tell you, and I am here today to tell you about some of those ways in which I think we need more resources.

But we are trying to go even farther. We have made it one of our strategic objectives in the FBI to reinforce that culture of stewardship so we maintain an approach that is like this when people drive a car that is an FBI vehicle, I want them not to think of it as somebody else's car. I want them to think of it as the taxpayers of the United States' car, so they must care for it like they borrowed it from somebody they care about deeply. And we want that attitude about our buildings, about our pens, about all of our resources. Because it is all borrowed from people who work hard to pay their taxes. We are trying to drive that attitude into this organization so that stewardship becomes part of the fiber of this great FBI.

I just want to say a few words about the things that I am here to ask for more support on. In particular we need a new headquarters very, very badly. If our people are going to be safe, be effective, and if we are going to be good stewards of the taxpayers'

money, we have got to get them all in a modern, safe, efficient FBI headquarters. So there is a big sum asked for in our budget to support that and I very much appreciate the support across the aisle on our need for that headquarters.

Cyber also remains a top priority of the FBI for reasons that this committee knows. As you know, we are asking for an additional \$85 million for cyber. That is going to go mostly to equipment and to training. We have to have equipment that is at least as good as the bad guys' so that we can move information, analyze information, and respond to the threat as fast as it comes at us, which is at the speed of light.

We have also asked for \$38 million to deal with the problem we call going dark, which is far broader than the problem with locked devices or encrypted communications. It encompasses a whole host of challenges to our lawful functions. And so we need to invest in technology, in particular, so we are able to execute lawful court orders in a good way.

And as Mrs. Lowey mentioned, we are also asking for additional support for our responsibilities to check the backgrounds of Americans who want to purchase firearms. We have seen a huge increase in the number of transactions we have to process. That has put great strain on our folks. They are working like crazy to make sure they meet that obligation to ensure that bad people do not get guns. But we have got to get them help, and that help has got to come in additional personnel. So we have asked for \$35 million to plus up the folks who answer the phones and who process the transactions.

And the last one I want to mention, Mr. Chairman, you and Mr. Rogers mentioned the challenge we face in counterterrorism. This ISIL threat is not your parents' Al Qaeda. As we have talked about many times, it is a dispersed threat. It is an effort by these savages to motivate troubled Americans to kill in their name and to reach them wherever they are, which unfortunately is in all 50 states. If we are going to be effective against that threat, one of the tools we have to have and to use well is surveillance. We have to follow some of these people to make sure that they do not harm innocent people. So we have asked for an additional \$8 million to hire additional people to make sure we are following bad people and keeping Americans safe.

Those are the items I wanted to mention in particular. I will just close by saying thank you, again, for the support to this organization. We know we can count on the resources, even in tough times, that are absolutely necessary to keep the country safe. And we are grateful for it. Thank you, sir.

Mr. CULBERSON. Thank you, Director. I know I speak on behalf of all my colleagues with the admiration that we have for the FBI and the good work that you do. But as Chairman Rogers said, and I deeply appreciate your recognition, that we have to all be good stewards of these very precious and scarce hard-earned tax dollars. And I particularly like your approach that you have played out, that you have asked all your employees to think of every asset, every resource, everything that you work with at the FBI as borrowed from someone who they care deeply about. That is a great way to think about it.

We have in this Subcommittee in past years and in the fiscal year 2016 bill worked hard to protect the supply chain. That has been a real source of concern. My predecessor Frank Wolf quite correctly identified this early on—I think Frank was one of the very first out of the gate, to recognize the threat posed to this country by cyber espionage, cyber theft, particularly from China. And the supply chain is one particular source of concern and vulnerability. So I wrote into the 2016 bill, in consultation with the good people in your office, to give the FBI an enhanced role in reviewing the supply chain for telecommunications equipment, for computer equipment, acquired by agencies under the jurisdiction of the Commerce, Justice and Science Subcommittee. Could you describe, Director, the threat that all agencies in the Federal government face from foreign governments and other bad actors to their information technology systems?

Mr. COMEY. Yes, thank you, Mr. Chairman. And thank you for your support of that effort. The FBI has taken your urging and marched out and executed on it. After the language in last year's bill we have promulgated already to every Federal agency on our website a primer on the best practices to think about supply chain. Because we are only as strong as our weakest link. So you can spend all the time in the world making sure that foreign states are not penetrating the top corporation in the chain but if they get in down below, they are going to wreak just as much havoc. So we have tried to train the rest of the Federal procurement world on how to think about that. We have also stood up something called the Hybrid Threat Center, which I just talked to the House Intelligence Committee about this morning. We have brought together a lot of elements of the intelligence community and other parts of the U.S. government to literally sit together and think about the threat posed to the United States by corporations who are allowing themselves to be co-opted and act as agents of foreign powers, and the work of foreign powers trying to penetrate that supply chain maybe at a lower level and work their way up. It is an enormous undertaking. I am not here to report that we have licked it. But thanks to your support, I think we have made a good downpayment on that effort.

Mr. CULBERSON. And the approach that we took, Mr. Chairman, in order not to overwhelm these good men and women, was asked the FBI to come up with sort of a Good Housekeeping seal of approval from the FBI, best practices as the Director just said. And the best practices, which you just published and I thank you very much for that, the agencies under the jurisdiction of CJS are compelled to follow the FBI's best practices to protect the integrity of their supply chain. Because we know of the threat posed by, there are a lot of countries but China is the worst offender, in building in hard wiring, Trojan horses, or back doors into computer chips. And I think Australia has just forbid, they will not allow any government entity to buy routers or telecommunications equipment manufactured by the Chinese. They just flat will not buy them because of the pervasive threat posed by the Chinese and using that Chinese built equipment to penetrate the government.

What has the response been, Director, from agencies once you have published the best practices? Are they adopting, do they seem



to be adopting the best practices that you have published? And are you working with agencies to ensure that they understand their supply chain threats?

Mr. COMEY. I am told they are making the right positive noises about it. It is probably too early to say what progress people are making at pushing those best practices into their procurement. But everybody seems to understand the threat, which is one of the most important parts of the whole exercise, to open eyes to what nation states could do to us. And so we really have to watch this space to see how well they do it. But that is part of our job, is to watch that space.

Mr. CULBERSON. So far so good?

Mr. COMEY. So far so good.

Mr. CULBERSON. Could you tell us, and I know this is an open setting, but you have talked to me about this in a classified setting, what could you tell us in an open setting about some of the, you have opened I know some eyes in some agencies and had some positive result. Is there anything you can tell us a little bit about that here today in a setting like this without getting too specific?

Mr. COMEY. Yes, I want to be careful because I do not want particular countries and companies who have been co-opted by those countries to know what I know. But there is no doubt there is a concerted effort by hostile states to use not just traditional espionage but to use so called legitimate ventures as an instrument to gain access to our systems and our processes. It is a fairly sophisticated effort that goes on. And as I said, it really requires eye opening on some—I see the world fairly darkly given the nature of my life. But it is important to make sure that some of our colleagues in agencies that do not have enforcement responsibilities, they see enough of the darkness to know that they should ask good questions and ask hard questions. That is what this education process has been about.

Mr. CULBERSON. I guess what I am driving at does this approach appear to be that it looks like it is going to be successful?

Mr. COMEY. It does. I think it is.

Mr. CULBERSON. OK. Very good, sir. Thank you very much.

Mr. HONDA. Thank you, Mr. Chairman. The House fiscal year 2016 CJS report included language on private lab and uploads to the Combined DNA Index System, called CODIS. We are very concerned that the current requirements make the validation of this data very time consuming. While we want to ensure that CODIS has a high level of integrity it is also important to get the information in a timely fashion, especially in the light of our need to bring sexual offenders and other violent criminals to justice as soon as possible. We asked that you examine ways to expedite this process. So how are you moving forward with the recommendations included in this report?

Mr. COMEY. Yes, thank you, Mr. Honda. That is a very important topic, one you and I, I think, have spoken about for the last two years. We have really wrestled with this, whether there is a way to require something less than 100 percent validation of a private lab before we will let them put anything in what is the gold standard database for this country on DNA—CODIS. And honestly, we have come to the place where we feel we cannot allow anything less

than 100 percent. Because if we do anything to damage the gold standard that is the nation's DNA database by letting subquality work be deposited into it, we are going to be sorry someday. So we have looked at that in good faith and been unable to come to a place where we think we can weaken the requirements for a private lab. Instead, we are trying to focus on ways we might equip the States, in particular, to catch offenders quickly while the validation process is going on. And what I understand we have been trying to do is equip states to allow private labs to put data into the State's DNA holding, before we allow them to put it into the federal. Because most of the hits for any particular offender are going to be in a single state, and so we think that deals with part of the problem. We have not done it long enough to know whether people are going to be happy enough with that to stop beating on us. But we have held the line on not allowing private laboratories direct access to CODIS. We have tried to speed it up by equipping the States to work with private laboratories in a better way.

Mr. HONDA. So explain to me then the relationship of the State's process and their inputting their data into CODIS, and how are they reaching the 100 percent validation standards that you are requiring?

Mr. COMEY. My understanding of the way it works, and if I screw this up I am sure experts will fix it and will come back to you. States have to validate 100 percent of the work of the private lab before it can be part of CODIS. And that is a time consuming process. We think it is necessary to maintain the purity of the gold standard. But what we have said is we have no problem if you want to use the private lab's result in conjunction with the state's depository of DNA data. And we think that deals with a large part of the problem because most offender information is going to be within a particular state, so the hits will be generated from intra-state data.

Mr. HONDA. Well not to be argumentative, but you are saying the states can achieve 100 percent validation according to your golden standards, and you are requiring each State to have these private entities to achieve that at the state level, and then it goes into the FBI, in your system, the CODIS system?

Mr. COMEY. I think that is right. We have told the country that we will not allow a private lab to put their information directly into CODIS. We will require that someone stand up for them and say "we have checked all of this out, 100 percent, and so it is good enough to go into the CODIS database."

Mr. HONDA. So help me understand, who stands up for the State to validate the 100 percent?

Mr. COMEY. I do not know the answer to that. I think we rely on the States to do it. But I am sure there is some audit function where we, at the national level, check how the States are doing. But we can get you that answer for sure if you need it.

Mr. HONDA. So can local law enforcement and district attorney's office achieve that validation requirement that you require?

Mr. COMEY. Can, say, local labs do it?

Mr. HONDA. Local labs and the DA's office? Or can law enforcement offices be trained to do that, aside from private entities?

Mr. COMEY. I do not know the answer to that. I will find out the answer and get back to you on it.

[The information follows:]

A State is responsible for verifying data they enter into the National level of CODIS—whether generated by a private laboratory or by the state laboratory themselves. In order to ensure that a state is adequately verifying the quality, there are auditing requirements that must be followed in order to participate in CODIS. The requirements mandate that a laboratory is audited annually, and that this audit must be performed by an external laboratory at least once every two years. All audit records must be submitted to the FBI for review.

In response to the whether or not local labs or DA offices could participate, these reviews are technical in nature, and require the scientific expertise of a DNA analyst to confirm that the analytical results are supported by the data and that all controls and standards were appropriate. An alternative available to laboratories, however, is the use of a qualified contract employee to perform the technical review. A law enforcement agency or prosecutor's office could provide finding for such a qualified contract employee to assist the laboratory with the technical review of outsourced DNA records. The quality requirements for technical review and auditing can be found on the FBI's web page at: <https://www.fbi.gov/about-us/lab/biometric-analysis/codis>.

Mr. HONDA. Yes, your comment about things happen just in the States, we just did an analysis in Alameda County, and we had a hit in Florida. So I think that the value of this kind of system is that bad actors can run around different States and so many, many crimes are left unsolved until we can input some of the data that we have in other places. So——

Mr. COMEY. I agree.

Mr. HONDA. I think that we need to keep moving forward. I am pushing this, but I appreciate, you know, our conversation and hope that we can continue this to a point where we can get rid of the 500,000 untested rape kits that are sitting on shelves. That is 500,000 victims and perpetrators who are not getting justice.

Mr. COMEY. I agree.

Mr. HONDA. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Honda. I recognize Chairman Rogers.

The CHAIRMAN. Mr. Director, ISIS and company are using technology to recruit members and encourage—you are battling with Apple over access to the iPhone of Syed Farook, the San Bernardino shooter. You are hoping to gain access to that phone to find out if there may have been other people involved, and so forth. The CEO of Apple says that your request would create dangerous legal precedent, would endanger the privacy of anyone with an iPhone. What do you think?

Mr. COMEY. Yeah. What we are doing in California with the U.S. Attorney's Office, in the San Bernardino investigation, is we have a search warrant for one the terrorists' phones, and the phone is one that is locked and cannot be opened without his pass code. And if we try to guess his pass code, after the tenth guess, the phone will essentially auto erase.

And so what the judge, in the court the search warrant came from, has done is issued an order to the manufacturer of the phone saying, you must do two things; you must shut off the auto erase feature on that particular phone, and you must also shut off the feature that when you start to guess potential passcodes it makes you wait a longer period of time between each guess. The reason being so the FBI can then electronically try to guess this terrorist's

passcodes. And instead of it taking ten years, it could be done in maybe minutes and or hours. That is the judge's order.

The manufacturers resisted it, and will have an opportunity to explain its legal basis, I think either today or tomorrow—which is as it should be. That is the great thing about the American system, we serve an order, people can litigate and object.

I do not fully honestly understand all the argument about privacy. My view of this matter is, this is a single phone in a very important investigation where the ask is to write a piece of software that will work only in that phone, right, not anybody else's phone. And you, Apple, can hold the phone so that the software you write never has to leave your premises. We will send you guesses electronically. And if you open it, tell us that it comes open.

So I do not quite understand some of the comments that have been made publically about how this is going to affect our world, but I think it does illustrate the bigger challenge we face. I am a huge fan of privacy. I love encryption, it is a great thing. But our need for public safety and our need for privacy are crashing into each other, and we have to sort that out as a people.

Sometimes I hear companies say, we are going to get you to a place where no one can ever look at your device. And even I react to that quickly saying, well, that's great, I don't want anyone going through my phone. Then you stop and say, well, wait a minute, law enforcement sometimes saves our lives, saves our children, saves our neighborhoods by getting search warrants from judges—sometimes for suitcases or for apartments, sometimes for phones—and if we are going to get to a world where there are spaces in American life that are immune to judicial search warrants, that is a very different world than the one in which we live and we have to talk about that.

Corporations should not drive us there, the FBI should not make this decision, the American people should decide how do we want to be governed. That is where I think this matters so much. San Bernardino matters because it is a hugely important case, but the bigger issue is tremendous and tremendously important.

The CHAIRMAN. What would you be looking for in this particular case?

Mr. COMEY. In this case, we are simply looking for compliance with the court's order that Apple write a one-off piece of software that shuts off the auto erase feature.

The CHAIRMAN. No, what I meant was, what could you possibly learn from this—from being able to access the phone?

Mr. COMEY. Well, possibly, as I have said, I don't know whether there is evidence of the identity of another terrorist on the phone, or nothing at all, but we ought to be fired in the FBI if we did not pursue that lead. We could not look the victims in the face and say, you know what, we decided not to execute a search warrant on that phone because it would be awkward or people would feel uncomfortable about it in some way. We have a duty to try to do that.

Now, if the judge says, no, the law does not permit that, we are big fans of the rule of law, and that will be the end of it, but we think we have to follow that lead. This is a live investigation, and it is hard to imagine a circumstance where our work is more important than this.

The CHAIRMAN. Well, as you said before, it leads us to a discussion of the larger picture of the use of the new technology that we enjoy today for evil purposes. What have you to say about that?

Mr. COMEY. This is the hardest problem I have seen in government because it implicates America's gift for innovation, implicates privacy, it implicates the rule of law, it implicates public safety, and so it cannot be bumper stickered. That is what I explain to people.

The FBI has a limited role here. First, it is to investigate cases to try to save people's lives and people from pain. The second is to make sure folks understand that this world some people imagine where nobody can look at your stuff, is a world that will have public safety costs. And we may decide, OK, it is worth it, but we shouldn't go there without people understanding it.

So what I am hoping is we will never have a day where folks look at us and say, what do you mean you can't? You have a judge's search warrant, right? A child is missing, or there has been a horrific crime, what do you mean you can't? Before we ever get to that day, we just have to talk about it and understand how we optimize both of these things we care about: privacy and safety. How do we do that? And it is not easy.

The CHAIRMAN. Quickly, my time is almost out. Heroin. In the last decade heroin use in this country has increased by 63 percent. How much of that is attributable to the Mexican cartels, like Sinaloa? And how are we letting this amount of heroin come into the country?

Mr. COMEY. The country is facing—and Mr. Chairman, you know this better than any American—a wave of highly pure heroin that is washing across primarily the eastern half of the United States. But as big a wave of highly pure methamphetamine is washing across the western part of the United States, and the waves are actually moving towards each other. They are starting to pass each other in the middle of the United States, and almost all of it comes from Mexico, that methamphetamine and that heroin.

It is highly pure, it is cheap because the Mexican cartels are growing the poppies in southern Mexico. So they are a business, their supply lines are very short so they are pushing this highly pure heroin into the United States. And especially kids are finding it so easy to move from opioid abuse to this highly pure heroin abuse and dying in the process.

So this is something I have had my eyes opened to and formed a partnership with the DEA to try and do something about. It is washing over us from Mexico and there are lots of challenges to the interdiction effort—the Director of National Intelligence this morning was talking about how, in his view, we need more resources for the Coast Guard because their ability to interdict these multi-ton loads has been diminished as their resources have diminished. I don't know the answer for sure, but I do think it is an emergency in the United States.

The CHAIRMAN. And now they are mixing a very powerful synthetic called fentanyl with heroin—

Mr. COMEY. Yes, sir.

The CHAIRMAN [continuing]. Not knowing the potency of that, and overdosing and dying. What can you say about that?

Mr. COMEY. Yes, fentanyl is 40, 50 times more powerful than heroin. And so they are mixing fentanyl—a lot of which comes from China, which is something we are now focused on—with the heroin. Even people who think they have gotten used to the heroin are killed in a snap when it has that extra hit of fentanyl in it.

You mentioned a film that Chuck Rosenberg, the DEA Administrator and I did an intro to to try and help educators and families understand what's going on here. There are thousands of people dying in this country from heroin—tens of thousands from opioid abuse and heroin. And it is so big a problem that it is almost hard to get our minds around, but we simply must.

The CHAIRMAN. More people dying from overdose from opioids than car wrecks. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Chairman.

Mrs. Lowey.

Mrs. LOWEY. Thank you, Mr. Chairman. And thank you again for articulating so clearly the challenge we are facing between privacy and security. I will not continue on that path, but many of us have very definite views on that.

And another issue related to cyber security. I remain very concerned with the attacks by cyber criminals on corporation's payment systems resulting in the theft of consumers' personal information. In the last few weeks, the fast food restaurant Wendy's announced an investigation of a potential credit card breach, of which they do not know the size yet.

Other the recent large financial data breaches affecting payment systems include Target, in 2013, 40 million payment cards, 70 million records of customers' names, addresses, telephone numbers, email addresses; Adobe 2013, 152 million customer names, encrypted passwords, encrypted payment card information; Home Depot 2014, 56 million customer email addresses and payment cards. Just some of the examples of breaches that we know of, and thousands more I am sure are not printed in the newspaper because the companies do not want to get this information to their stockholders.

Your budget includes an additional 85 million to address the problem, but it seems to me that unless there are consequences, arrests, and prosecution, these will continue to be very attractive activities for criminals. I can remember being briefed ten years ago by Ray Kelly, the New York Police Department, and it seems they were always behind. They would always hear of these events after they occur.

So how many of these large cyber breaches end with the responsible parties being arrested and prosecuted? And what can we really do about this? How do we improve that? What concerned me most about the briefings I got from police Commissioner Kelly is that we were always behind. And very often the corporations do not want anyone to know. So, thank you.

Mr. COMEY. The honest answer to your how many question is not enough. We do not have good statistics on how often it is happening for some of the reasons you alluded to. But the major problem we face is so many of these offenders are outside the United States because the Internet allows them to travel as a photon. They do not ever have to come in at JFK and get their luggage and

then come in someplace and steal from us, they are able to do it through the internet.

And so we have to, as you said, impose a cost so they do not think it is a freebie to steal from America. And our goal is to have them feel somebody's breath on their back as they are sitting at the keyboard, wherever they are around the world. And the only way we get them picturing that is if we lock people up.

We have made good progress here, not good enough in a couple of ways. From the FBI's perspective, we are embedding more cyber agents and cyber analysts overseas to have them sit with local police and local counterparts—as old fashioned as that seems—so we can get the evidence to make the case, and then get our foreign counterparts to arrest these people. That is the first thing.

The second thing we are trying to do is make it less profitable, even for those who steal. What has happened since Ray Kelly's briefing is the crooks, their world has evolved to such a sophisticated place they actually have marketplaces now for criminals where if you steal credit card information, you do not even have to know who to sell it to, go to the marketplace and hire a cash out person, or hire a carder, or hire a coder.

So we are focused on trying to destroy those marketplaces because it is actually a weak spot in the criminal world. They have evolved and gotten sophisticated, but it actually gives us a chance to attack them at a hub that will disrupt their activities. So we've got to lock people up and send that message around the world, and we got to attack them where they are most vulnerable, and that is in their marketplaces. That is how we are thinking about the strategy.

Mrs. LOWEY. You know I mentioned several situations that have been pretty public. How good is the communication between the private sector and your office, or other law enforcement offices, or are they still not quite sharing?

Mr. COMEY. No, it has gotten much, much better. Just in the two and a half years I have been director it has gotten better. Because a board of directors—boards of directors are asking about it, CEOs are asking about. Do we have a relationship with the FBI or for the payment card folks, especially the Secret Service? And are they sharing information with us, and are we sharing it back? That has improved dramatically. It is still not good enough because our economy is so big and so complex, but it is in a much better place today than it was even two and a half years ago.

Because people understand the business imperative, that it will save you money if you develop a relationship with us so we can tell you what the indicators are of the crooks so you can lock your door against them, and so that we can quickly respond if you are attacked.

Mrs. LOWEY. I just wonder—and I am going to close with this, Mr. Chairman. In my discussion with some corporate boards and individuals, most of them have hired huge numbers of people to deal with this at their own business site. And I just wonder how much communication is taking place between you, and your staff, and the corporations before something happens. Is there sharing of technology or are they all keeping their own systems to themselves?

Mr. COMEY. I think companies would tell you this as well—it has gotten much, much better. We are doing things like—and I won't get into boring details, but we have built something called the Malware Investigator. The FBI, for years, has had a database, like our fingerprint database, of all malicious code that people use to try and break into different systems. And we, when we would investigate, would always query it.

What we have done now is told our trusted private sector partners, we will give you an account. We will let you hook up to that. If you encounter malicious code, you think it is malicious, type it in, dump it into our database, and you will get a result in minutes, sometimes seconds. And that is in our interest because we get more people contributing samples, but it is in the company's interest because they get quick answers. You should call LA, the FBI's LA office has dealt with this.

That is one example, but we got to get better because even that is not what they would call machine speed. But that is much better than it was three years ago.

Mrs. LOWEY. Thank you. Thank you, Mr. Chairman.

Mr. CULBERSON. A very important question, Ms. Lowey, and I can tell you from personal experience that I have had several companies in the Houston area, one research center here even recently complimented you, Director, and your team for it. They showed up—the FBI showed up at their doorstep and said, we think you have a problem. And they sat down in a private setting, and walked this research center through the attack that had taken place that the researchers had no idea that, once again, the Chinese had broken in and stolen all this stuff. So you do great work in this area and it is something we need to continue to help you in.

Mr. Palazzo.

Mr. PALAZZO. Thank you, Mr. Chairman. Director, it is great to see you again. Last year, in my first hearing with this subcommittee, you testified that there are active terrorist investigations in all 50 States.

Since then, two students in my home State of Mississippi were arrested trying to join ISIS. Can you provide us an update on what the FBI is doing to keep US residents from joining ISIS or other terrorist groups?

Mr. COMEY. Yeah. Thank you, Congressman. I remember well our conversation a year ago. The picture today is worse in some ways, better in some ways. Worse in the sense that the number of investigations we have into people who are on some spectrum from consuming ISIS' poison to acting on it has continued to slowly rise. We have about 1,000 now in the United States. So that is very concerning.

The good news is, we see fewer people attempting to travel to the so-called caliphate, which is a nightmare on earth. We see that number dropping. And I don't want to be overconfident in saying what to make of it, I hope part of the reason is the federal courts have given people significant jail sentences for joining ISIL, or attempting to go to ISIL, so people understand there are huge costs associated with dabbling with these savages.



So I am hopeful that trend will continue. Over the last six months, the number has stayed down. But the case from Mississippi illustrates the challenge, especially young people who are unmoored who are looking for a center in their life. And a lot of people find that in unhealthy way through ISIL's propaganda. So it remains a dominant feature of the FBI's work in the United States.

Mr. PALAZZO. In your testimony you mentioned that terrorists are utilizing social media and the Internet to disseminate propaganda and recruit American citizens to travel to ISIS, and you said that those numbers seem to be trending down. But, you know, they are still trying to recruit people to do harm here in America, or attack us from within. What is the FBI doing to detect, monitor, and prevent terrorists from recruiting within our own country?

Mr. COMEY. Everything we possibly can, under the law. We are trying to make sure that we have appropriate source base, that is, we have people in communities who will tell us when they see something odd going on. We try to make sure that we have a robust undercover presence, where appropriate, to find out what is going on. We try and make sure that we are tightly connected with state and local law enforcement. And I probably should have said this one first because it is the deputy sheriffs and the police officers who know their neighborhoods and know the kids in the neighborhood who will have a sense of who is going sideways, so that is really important.

And then we are building relationships with American companies, all of whom think about this the same way. They do not want their products used by terrorists. And then the last one I mention is, we are also making sure we are tight with our foreign partners who may see things overseas that are leads into the United States for us to follow up on. And I have probably forgotten something, but those five are probably the core of it.

Mr. PALAZZO. Thank you, Director. I yield back.

Mr. CULBERSON. Mr. Kilmer.

Mr. KILMER. Thank you, Chairman, and thank you, Mr. Director, for being with us. I am honored to represent 11 tribes in the district I represent, I take our nation's responsibility to promote tribal sovereignty and to protect treaty and trust obligations, I take that seriously.

Right now 25 percent of violent crimes prosecuted by the U.S. Attorney's offices are tied to Indian country. So I would like to hear more about how the FBI promotes and supports self sufficiency for tribal law enforcement. I would love to get a sense of how much money the FBI is making available through this budget request for us supporting tribal law enforcement. And also just get a sense of internally how do your operations, you know, just within your own capacity, support the investigation of violent criminal acts in Indian country?

Mr. COMEY. Thank you, Mr. Kilmer, and thank you for your interest in this issue. I worry a lot that at times the reservations seem like crime scenes without a constituency, that no one speaks for the violence and especially the harm to children on so many of our reservation lands and among the Native American people. So thank you for this.

We deal with it, operationally, through the Safe Trails Task Forces, two of which we work out of the Seattle office. So that is a huge feature of our work, especially west of the Mississippi. It is one that I have taken a personal interest in. I have visited reservations when I was Deputy Attorney General.

I have two daughters who, on a church mission, went to an Indian reservation 2 years ago and came back and said, "Dad, you are the FBI director, you must do something." They are probably the most important constituency in my life I have had to report to—Chairman Culberson is an important constituency, but I have to report to my daughters and tell them what I have done. So among the things I have done is try to incentivize our talent to go do that work.

The details are not important, but we have created incentives for our best and brightest special agents and analysts, to go work in Indian country to do that work, which is incredibly difficult work.

As you know, we continue to do a lot of training with the BIA and with tribal law enforcement, and I don't remember off the top of my head the particular numbers, because they have to be the front line of defense. The FBI is enormous, but it is not as enormous as this problem, and so we rely on the BIA and tribal law enforcement.

But I am not here to tell you that I think the FBI is solving this challenge, honestly. It is so big, and so horrific, and so invisible to so much of our country, that there is not an easy answer.

Mr. KILMER. I would very much like to follow up with you and your team on that. I want to switch gears entirely. Earlier this month, a hospital in Los Angeles fell victim to a ransomware scam, and ended up paying \$17,000 to hackers just to regain access to the hospital's computers. And we have heard about these sorts of attacks being perpetrated against cities, and law enforcement agencies, and schools, and companies, and just regular citizens where people are often forced to pay their own money just to get access to their own technology.

I would like to just get a sense from you of what sort of safeguards against these types of cyber crimes should we be looking at? What can we do? You know, I know as the FBI investigates these sorts of things, are you learning any lessons from that? And is there any direction to us as policymakers in terms of what might be done in this space that may not currently be providing you the resources you need?

Mr. COMEY. Yeah, thank you. This is a phenomenon, as you said, that is sweeping across people and nonprofit and profit institutions. From the computer hygiene perspective, the lesson we have learned here is everybody within the sound of my voice should have a good backup. Whether it is your laptop, or whether you run a hospital or a business, you must ensure that you have adequate backup because the Internet is a very hard place to police successfully.

At some point, someone may try and lock up your device and then demand money for it. You are immune to them if you have a good backup, as a company, as a hospital, as an individual. So that is my overwhelming piece of advice to folks. And then from our perspective, to follow up on my conversation with Mrs. Lowey, we have to impose costs on those people who are mostly outside of

the United States, reaching in and locking up peoples' systems, then asking that bitcoin or money be wired to them. So we need to track those people down and lock them up to send a message that this is not some game or some freebie. That is hard, but it is something we are trying to do every single day. So those are my two pieces of advice.

Mr. KILMER. Thank you, Mr. Chairman. I yield back.

Mr. CULBERSON. Thank you very much.

Judge Carter.

Mr. CARTER. Thank you, Mr. Chairman. Director, welcome. You know the high regard I hold your agency and you personally, and all of these agents. I think you are an example of excellence that we have to be, and are very proud of.

And I want to start off with something that is local to me. After much frustration with the VA on the lengthy time waits and the conspiracies that seem to have existed to shuffle papers and harm veterans, I asked for your assistance, and you all became involved. And I am very aware, from having dealt as a judge with the FBI, you do not comment on investigations.

Not asking you to do that really, but in a way, because we get about 250 to 300 calls a week, and they know you are there, and they know you are working, and they are concerned, these are veterans that are concerned. What can we tell the veterans about progress on looking into whether there is actual criminal activity that involves in the stories we have heard about people making money over delaying veterans getting reached?

Mr. COMEY. Yeah, thank you, Judge. The most you can tell them is we are working it and working it hard. I checked on it yesterday knowing that I was going to be here, and knowing of your interest in it. We are working it. As you also said, we do not talk about our work for good reasons, but I can assure the folks who call you, we are on it and we are working very hard.

Mr. CARTER. And most of them trust you too and, therefore, that would be a good message to send.

Secondly, something that is very important to me. Yesterday, or this week, I introduced a bill to expand COPS grants to include the active shooter training. I am well aware that the FBI is heavily involved in active shooter training, and I think it would be—give that access to local law enforcement that for something they can't—many of them can't afford now, by using COPS grants to get involved with active shooter.

Would you comment on what your thoughts are on the active shooter training that the FBI gives and receives, and then the expansion to—or the necessity to expand to other law enforcement to understand how that active shooter program works?

Mr. COMEY. That ALERRT training, which, as you alluded to, comes out of the great state of Texas, out of a university, Texas State, I think—

Mr. CARTER. Yes, sir.

Mr. COMEY [continuing]. That training saves lives in the United States. And it is so important. We have trained tens of thousands of law enforcement folks using it so they can then train others; so millions of people in law enforcement in the United States should have that training. And then it ought to go beyond that, frankly.

So I am a huge fan of it. Any way it can be supported and spread more is in our national interest in my view.

Mr. CARTER. Well, I think it is making it as one of the criteria you can apply for COPS grants for is a good concept. Right now it would not be covered, but we think we can—we are going to get a huge amount of support. And I think from both sides of the aisle, we will get a huge amount of support because I truly believe after the shooting at Fort Hood, and realizing that both officers who responded and were successful in bringing down the shooter were both active shooter trained, one of them by the FBI. So it is quite—it obviously works.

Mr. COMEY. Yeah. And I hear about it all over the country, Judge. I travel a lot and meet with State and local law enforcement, and they talk about it constantly. It actually inspired us to produce a video—I don't know whether you have seen it yet—a movie called *The Coming Storm*—which is about an active shooter incident at a community college. That movie is good and so important to law enforcement; we have made tens of thousands of copies and just given it away around the country.

Mr. CARTER. It is great, and thank you for that. And, by the way, as we started this process we contacted your office, they were very cooperative and very—and encouraged us very much, and I am happy to do that. Thank you, Mr. Chairman, I will get the next round.

Mr. CULBERSON. Thank you, Judge.

Mr. Jolly.

Mr. JOLLY. Thank you, Mr. Chairman. Mr. Director, thank you for being here. I appreciate the full Committee chairman bringing up of the current matter with Apple. I have some very strong opinions about that and there is a question here, but I want to start by thanking you for being diligent in pursuing the court order and staying on top of this.

I looked at my view of the world, and I realized that as one member of this committee does not necessarily reflect the entire committee, but this is a court order applying to one phone, and Apple is refusing to comply with that order. And, frankly, if their failure to comply means that there is additional information out there that has already contributed to other incidents, or will in the future contribute to other incidents of terrorism or national security, I think Apple leadership risks having blood on their hands. And I think Tim Cook is going to have a very hard time explaining why he stood in the way of justice on this issue. So I thank you for what you are doing.

This is not my iPhone you are trying to look at, this is the iPhone of Syed Farouk, who I believe is an individual who gave up every single one of his civil liberties the day he killed 14 Americans and injured 21. And so I thank you for what you are doing on that.

I know our chairman asked what might be on that phone, and it led to a bit of supposition about the content of communications. From a factual standpoint though, what are the files on a typical phone, and what profile might you be able to build of his activity or communications? As a layperson, I would presume phone calls, messages, but what profile do you not have of this murderer that you might otherwise have?

Mr. COMEY. Yes, the particular challenge we face in this case is the phone was last backed up over three weeks before the attack. Again, I don't do any of this to pick on a company, I actually find the company has been helpful in a whole lot of ways, they just got to a point where they said we will not assist you further, and for reasons that I don't doubt they hold honestly. But if the stuff is backed up to the iCloud, Apple cooperates with court orders, and we get backed up photos, or all kinds of records about people we can get lawfully with a judge's authorization.

So anything that might have been backed up to the cloud may still be on the phone. That would be photos, or texts, or notes, or GPS information where this phone traveled. One of our real concerns here is, we have 19 minutes we can't figure out where they were after the attack. We have looked at every gas station camera, every intersection camera, we have the whole route, but we are missing 19 minutes before they were finally killed by law enforcement. The answer to that may be on the device.

Mr. JOLLY. Because a phone would typically—you would have some type of GPS or tower signals that you would know approximately where they were—

Mr. COMEY. Sure. They may have—

Mr. JOLLY [continuing]. During those 19 minutes?

Mr. COMEY [continuing]. All kinds of locator services turned on in connection with the phone. These phones are wonderful, I love them. And our entire lives, in a way, are on the phone. And that is why people ask good questions about privacy, but it is also why I want people to take a step back and say, so if we got to a world where those places were warrant proof, what does the world look like?

And that is the other thing I want people to understand. It is not the Bureau going and opening people's devices. No, no, no. If we want to open your device, we go to a judge, we make a showing of probable cause, the judge issues a specific warrant, tells us what we can take from the warrant, and what we can take from the device or the place and how we can do it.

Mr. JOLLY. Well, I thank you for that. Obviously, you know the perspective from which I am coming. And I am sick and tired in this town, and across the country, with people not siding with law enforcement. And in this case, that includes Apple, and it includes Tim Cook.

You have got folks up here that I know side with law enforcement. I appreciate what you are doing, I hope you do prevail. We will leave that to the courts to decide. I don't doubt their intentions. And I agree with you, I do not doubt Apple's intentions. I just think they are wrong on this one, that they are erring on the side of privacy, and cloaking what is a national security moment in which they could contribute to a safer America, and they are choosing not to. So I appreciate you. Thank you very much.

Mr. CULBERSON. Thank you, Mr. Jolly. Director, I recently visited the National Cyber Investigative Task Force to see the very serious and persistent threats to our information security systems and infrastructure. And last year the country learned of the huge loss of personal data from the Office of Personnel Management, again stolen by the Chinese, who continue to be the worst actors out there.

And during the Super Bowl weekend hackers posted online personal information for over 20,000 FBI and 9,000 Department of Homeland Security employees. It is a source of great concern to all of us.

The Department of Justice said that it was looking into the unauthorized access of a system operated by one of its components and there have been news reports that an arrest has been made.

Director, you are asking for \$626 million for your cyber security programs, which is an \$85 million increase. Could you talk to us about how the FBI is dealing with this threat and the realities of intrusions like this, and how will this requested increase help you address that threat, both for the FBI, for the Department and for the country in general?

Mr. COMEY. Thank you, Mr. Chairman.

We are dealing with this threat in a number of different ways, which I can summarize briefly. As we are trying to shrink the world—and what I mean by that is we are trying to impose costs on the bad guys, so they know no matter where they are, we can reach them and put handcuffs on them—but we are also trying to shrink the world within the government. And I am so glad you visited the NCIJTF, because that is the best example of what we are doing.

Probably ten years ago, the cyber response is a bit like four-year-old soccer, everybody chases the ball—I have five children, so I have watched a lot of four-year-old soccer, they chase the ball in a big clump. What the NCIJTF represents is about 20 federal agencies with responsibilities that touch cyber sitting together, which is a big deal in our national government, and sharing information about what do you see, what do you see, and who is going to do what about it.

So we have really spread out on the field, to stay with the soccer metaphor, and we are deciding who has the clearest shot, who is in the best position. And that is the answer, because the problem is so enormous that nobody can do it alone and, if we all chase it, we are going to ignore a big piece of it. That is the first thing.

The second thing is, what the budget increase is for is we have to make sure that we equip our people with the right stuff to be able to respond to this. So a key part of our ask is for us to be able to have a better high-speed network to move these enormous clumps of data that will help us see and understand a cyber threat.

And the last piece of the \$85 million is for training. It is vital for us to train our folks and state and local law enforcement to be able to respond to this threat, because it is getting more sophisticated every day.

So we are trying to shrink the world, we are trying to equip our folks better, and we are trying to make sure our folks are trained well. Then, obviously, we need to attract great people to do this work for us and keep them in the harness doing the work at the FBI. That is how I would describe our strategy.

Mr. CULBERSON. Thank you, sir.

Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

Director Comey, I have serious concerns about the privacy implications also of the FBI's ongoing attempts to force Apple, which is

based in my district, to create a hack to allow to allow the FBI to gain access to encrypted information on the phone of one of the San Bernardino shooters. I realize that you face a tough challenge investigating this attack on our nation and our communities; however, what the FBI requests will echo beyond this case. It will create a weakness that can be exploited and invite attacks on Apple by those seeking to gain access to the new code the FBI seeks. These possibilities must be weighed against the information the FBI will be able to recover from the phone of the San Bernardino shooters.

You have said repeatedly that this is about one phone, yet there have been multiple news stories highlighting other phones that the government seeks to access.

Can you promise that this is the only time you will ask Apple or any company to create software to gain access to a phone?

And as you know, Apple is an international company. If Apple were to comply with the U.S. Government's request to build code to its specific needs, do you worry about China and Russia requesting the same?

Mr. COMEY. Thank you, Mr. Honda. And I am going to try and make sure I hit all parts of your question.

First, let me start with what I understand the court's order to be directing. And I am not an expert, but I have talked to a lot of experts, so I will give this my best shot. I do not think it is accurate to say that the manufacturer is being asked to create some code that could get loose on the land and do harm in two different respects.

First, what the court has directed them to do is to write a piece of code that would only work in the terrorist's phone. It would not work in anybody else's phone because it is written to the unique signature of that phone. And the second is, they will have custody of it the entire time. The phone would be at the manufacturer, the code would be at the manufacturer, and I think they have excellent security.

In fact, in 2014 and before, Apple would unlock phones routinely in response to search warrants and do it at their headquarters, and I have never heard anything about anything getting loose and hurting us there. So I greet that, honestly, with a little skepticism, but the judge will sort that out.

Mr. HONDA. Well, excuse me, let me ask the question then. Are you saying that Apple's technology say for i6, the access code is only for one individual phone and that will not affect other i6 phones?

Mr. COMEY. Here is the way I understand this. And again, I have talked to experts, but I am not one, but again I am going to try to explain it as I understand it.

What makes this case unusual and I wrote about it as, the relief we seek is increasingly obsolete, and here is why I said that. This is a 5C phone running iOS 9. That confluence of operating system and hardware is increasingly outdated. The 5C still has the ability for Apple to write a unique code for that one phone that will shut off the auto-delete function and shut off the delay function. I do not believe that is possible the way they built the 6 and phones built after the 5C. They did the hardware differently.

So I actually do not think that even if the judge says this is appropriate, after hearing from Apple the some technique will not be useful in later-generation phones running iOS 9 and thereafter.

That is what I am told by experts, but as I said, the great thing about the American court system is they will be able to bang together and sort this out.

Mr. HONDA. Well, I am not a lawyer, but let me ask the question then. If that were to be done for one phone at this one instance and it creates a precedence, will that precedence require other opportunities for law enforcement to access other technologies and other people's phones?

Mr. COMEY. Yes, I am a lawyer. It definitely might, because here is what would happen——

Mr. HONDA. Well, my follow-up question is then, if that is yes?

Mr. COMEY. Can I explain why? I am sorry.

Mr. HONDA. Go ahead.

Mr. COMEY. Can I explain why I say that? Because a judge will issue a decision in California interpreting the All Writs Act statute, that would not be binding on other judges, but there will be other phones because, as I have been saying for two years, this is a huge issue for State and local law enforcement. There will be other phones and other judges will look to that to see whether that is a similar circumstance. So there is no doubt about that.

Mr. HONDA. So my follow-up response is, if it does create precedence, what is its impact on constitutional principles?

Mr. COMEY. Well, that is a good question, because the precedence will be created under the framework of our Constitution. Right? I mean, a search warrant is an exercise of authorities under the Fourth Amendment. The All Writs Act, which Congress passed when it passed the Fourth Amendment in 1789, is an exercise of the court's jurisdiction. That is why I keep stressing, this is not us going and opening people's phones, it is us going to a constitutional court, asking for permission under the Fourth Amendment to do something.

And so it would be a precedent in the sense that a court would look to it to see whether it was useful, but the entire framework is under our rule of law.

Mr. HONDA. Mr. Chairman, not to be argumentative, but this is technology, but still it is a constitutional question, it seems to me, in terms of you are arguing security versus privacy clashing.

In 1941, December, we had Pearl Harbor, and there was a group of U.S. citizens in this country that were incarcerated based upon security and privacy and national security. And these folks were moved in total to other places out of their homes without due process. When we looked at it 40, 50 years later with some hindsight, we realized that we reacted not judiciously, but we used the courts, the Supreme Courts also, to justify some of the actions of the government.

So I am just saying this as one person who has seen this kind of thing happen, I am very cautious about how we move forward. I understand the tragedy. I have mentioned that in times of tranquility, our Constitution is very rarely challenged, but in times of terrorism and trauma and tragedies, you know, it is when we need to be vigilant and thoughtful about it and just think it through, be-



cause we do not want to make a mistake as a nation that believes in the rule of law.

Mr. COMEY. I agree completely, Mr. Honda. That is why I think it is so important that this be a national conversation, because the stakes are too high. It affects how we are going live, how we are going to govern ourselves, for our children's lives and our grandchildren's lives. And so I do not think it ought to be decided by one court case or another court case, or the FBI or some company. The American people ought to decide how do we want to be.

Mr. HONDA. Thank you, Mr. Chairman. And just to say that I agree that we should have a national conversation, because in the past these kinds of things have always been rushed into and thoughtful people need to get together with their own opinions and hash it out.

Mr. COMEY. I agree.

Mr. HONDA. So I appreciate this.

Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you.

Chairman Rogers.

The CHAIRMAN. Your request includes 783 and a half million for FBI headquarters construction. Actually, 646 million is for the building and the other is for other things. That is a huge request. And at the same time you are proposing significant cuts in FBI operations, which I find a little bit troubling.

Tell me how important it is for a new building.

Mr. COMEY. Very, very important. And I will have failed if I leave the FBI in the current crumbling infrastructure and failed the taxpayer, frankly, because we are in a dozen or more facilities around Washington, it is incredibly inefficient. We are blowing all kinds of dough on leases that we should not be spending, because we have outgrown a headquarters that was built 40 years ago and it is literally falling down.

And the reason we have netting around the top floors of the FBI is not to protect us from the civilians, it is to protect the civilians from us falling on them. Not us or my employees, I am sorry, the building flaking off.

And so I think it is critical that the Bureau be in a place that is commensurate with the mission of the FBI to protect the American people. And I know it is expensive, but the vision is build a building that I will be long gone from this earth and it is still functioning and efficient and safe for our folks.

So I am a fairly stingy person when it comes to money, this is money that I believe is well spent. But to be good stewards, we are also squeezing ourselves in other areas, as you said, to make sure that we are not only talking it, but we are walking the walk.

The CHAIRMAN. Well, just as you earlier very eloquently described your instructions to employees, that car is not yours, treat it like it is the American public's, we do that with the dollars. So we are really stingy with what we pass out too. We try to treat these dollars like they are our own, I guess.

Actually, the request total is for 1.4 billion, about half of which is for GSA—

Mr. COMEY. Right.

The CHAIRMAN [continuing]. And half roughly for FBI. But the request also includes what I think is an unworkable gimmick to authorize DOJ working capital funds to be used for construction.

How do you propose that to work?

Mr. COMEY. Mr. Chairman, I do not know enough about that to give you an intelligent answer. I understand that GSA intends to have whoever wins the bid take our existing building in partial payment, but I do not understand enough about the working capital fund. I will get you a smart answer, but I can't answer it right now.

[The information follows:]

The FY 2017 President's Budget includes language allowing the FBI to use up to \$315 million from the Department of Justice's Working Capital Fund to mitigate funding shortfalls that arise in the new Headquarters project.

The CHAIRMAN. Do you know what the intended use for the present building would be?

Mr. COMEY. I think GSA's idea is sell it to a developer. The developer who builds the new building will get, in partial payment, the current building on Pennsylvania Avenue and can develop it however the local law allows them to develop it, hotel or office building or something like that. But we will be using that object as partial payment for the new building.

The CHAIRMAN. Now, has there been—

Mr. COMEY. That is my understanding. This is a GSA deal, but that is my understanding of how they are going to do it.

The CHAIRMAN. An unfair question really.

Has there been a site picked for the new building?

Mr. COMEY. No. It is narrowed to three possibles and this year the competing developers and builders will offer their proposals. Then there will be a selection thereafter to pick which of the sites is the smartest one. Two are in Maryland, one by the Greenbelt Metro, one next to FedEx Field. The third site is in Springfield just south of where 95 leaves the Beltway heading south.

The CHAIRMAN. Mr. Director, thank you for your service.

Mr. COMEY. Thank you, Mr. Chairman.

Mr. CULBERSON. Mr. Director, have you also explored, rather than selling the property, hanging onto it and leasing it in a long-term lease? I know that some of the most successful real estate developers in downtown Houston that owned that property way back in the 1840s and '50s just hung onto it.

The CHAIRMAN. It would make a great McDonald's, you know. [Laughter.]

Mr. CULBERSON. Yeah. Well, what they do, they lease it out like Shell headquarters. Most of those big buildings in downtown Houston are on leased property, 99-year leases. So hopefully explore that as well. Why sell that valuable piece of real estate? Why not hang onto it and lease it out virtually in perpetuity and it will be like a little oil well for you, just keep pumping year after year.

Mrs. Lowey.

Mrs. LOWEY. Thank you, Mr. Chairman.

And I just want to say again how much I appreciate and how fortunate we all are to have a person of your caliber in this position. I know you served in an outstanding role in New York and we are

glad that the President was wise enough to bring you here to Washington, D.C. Thank you.

And I just want to say as a result of my colleagues' comments on both sides of the aisle, I also appreciate your articulation of the challenge you are facing between privacy and security. I may have a different perspective than my colleague Mr. Honda, but I certainly appreciate the sincerity and the thoughtfulness with which you presented your views. So I thank you.

I wanted to continue a discussion briefly within my time of an issue I brought up in my opening statement and that is background checks. As we know, under the law, background checks must be done within three days or the transaction is allowed to proceed regardless of whether a person is lawfully permitted to purchase a firearm. To meet the growing demand, your budget requests 35 million in funding for improvements to the NICS system, the National Instant Criminal Background Check System, to support 175 additional staff.

It seems to me it is vitally important that background checks are done thoroughly, as the results of incomplete information can be deadly. For instance, following the tragic South Carolina mass shooting, it was discovered that the shooter had passed a background check despite information that could have disqualified him. I was shocked to hear of that. And to those who lost their lives, they must feel the pain to think that this could have been avoided. And I was pleased that last summer you ordered a review of the incident.

Can you briefly share what the review discovered, is it appropriate for you to share it with us?

Mr. COMEY. Yes, sure. And thank you for that.

The fact that the South Carolina murderer, Dylann Roof, got the gun is an extraordinarily painful thing for all of us at the FBI. And he did not actually pass the background check, we just had not resolved a question about his criminal history by the end of the third day. And so the seller, under the law, was able to transfer it to him and he killed the folks thereafter.

So the review I ordered established the facts as I had understood them at the time were what we had understood. We learned that we needed to do better—it is a long story, but the reason he was not picked up is our information on some of the geographical oddities of South Carolina caused our examiner to miss something. And that makes it clear enough, so we fixed that.

Then we concluded we need more folks answering the phones, because the number of gun purchases is going up. We need to update our technology, which was already underway.

And then we need to get the American criminal justice system to dramatically improve its record keeping, because one of the big flaws in our whole country's criminal justice is dispositions. People are not good enough at entering the final conviction or result in a criminal case, at the Federal level and at the local level. And if that is not in there, our examiners are not going to see that the person is a convicted felon and prohibited people get guns.

Those were the big conclusions from the study. And so we are asking for your support to get more people in there, the technology updates are already underway, and we are talking to our State and

local partners and others in the Federal government to improve our record keeping so we have better results.

Mrs. LOWEY. Yeah, thank you for that. However, as I understand it, the majority of firearm purchases from law-abiding citizens can take minutes, but for those with incomplete information or red flags, the request for information can go on for days. So it is not necessarily that you need more people answering the phones or do what they have to do.

So the question is in these cases, how long can it take for final determinations even after a gun has been purchased? And I am concerned that three days may not always be enough time to evaluate a background check with questionable information. And I think that is an issue that we have to discuss no matter where we stand with the NRA, not the NRA, whether you can buy a gun or not. We need a careful background check. And I think it is not just that you need more people, you need more time; is that correct?

Mr. COMEY. Under the law, we have three days and—

Mrs. LOWEY. That is exactly what I am questioning.

Mr. COMEY [continuing]. About 9,000 people a year we find out after the third day that they were prohibited. About 58 percent of those we find out between day four and day ten. So most of the prohibited people who are outside the three days we find out before the tenth day. Now, that is 9,000 people of, as we talked about earlier, millions and millions of gun transactions, but still we have to improve.

I mean, the law is the law. The FBI doesn't make the laws. So if it is three days, we have to make sure we are as good as we can possibly be within that three-day window. That is why we need more people, that is why we need better technology, that is why we need better records.

Mrs. LOWEY. I would just like to ask you, if in fact the time was extended, I am not saying it should be five days, ten days, that is a professional judgment, but would fewer prohibited individuals be able to purchase firearms if this time were extended?

Mr. COMEY. Well, the math would tell me yes, that—yes, because nine—

Mrs. LOWEY. OK.

Mr. COMEY [continuing]. Because of the numbers I gave you. But as I said, the law is the law, and so the Bureau is working very hard to make sure that we are excellent within the time we have.

Mrs. LOWEY. I understand. I do not want to put you on the spot and I understand the law is the law, but you have many people here who make the laws.

So I just want to conclude, Mr. Chairman, I think it should be a serious consideration. If in fact we saw what happened in Charleston and we see many other cases, if three days does not seem sufficient, none of us would want people to go around purchasing guns if you look at the facts and they shouldn't be able to do so. And I would hope we can consider extending the days, working on a recommendation that makes sense that would give you some guidance. I certainly understand you are obeying the law and should continue the law, and I hope we can deal with the law.

Thank you.

Mr. COMEY. And to be clear, the smart people who work for me say I got the number right. About 9,000 people were denied whose reviews had gone beyond three days. About 270,000 total checks went beyond three days, but 9,000 were prohibited people who were denied. So I had that about right.

Mrs. LOWEY. Thank you very much.

Thank you, Mr. Chairman.

Mr. CULBERSON. And it is also important to remember, it is not about standing with the NRA, it is standing on the Second Amendment and protecting our constitutional right, which is written in plain English, to keep and bear arms, which is fundamental to who we are as Americans.

Mrs. LOWEY. Oh, I don't know, are we going to have that debate now? [Laughter.]

Mr. CULBERSON. Let me go quickly, we are short on time, let me go to Judge Carter. Mr. Palazzo, forgive me.

Mr. PALAZZO. OK, I will make my question quick.

Director, before coming here, I served on the Homeland Security and the House Armed Services Committee, so I take it very seriously, you know, making sure Americans are protected abroad through making sure we have a strong national defense, and also protecting Americans here in our homeland. So that is why your remarks earlier about those who are trying to recruit Americans and doing the radicalization here to do harm here in our country, we talk a lot, not just during presidential political years, but how are we going to fix our southern border.

I am concerned from more so than people coming over here to find a job to send money back home to their family as I am foreign nationals who may want to do us harm, human trafficking, drug trafficking. We know how devastating drugs can be to a community, to families. And just the things, the external threats coming in. I know you have spent time, you actually went down there and investigated the possibility of an ISIS camp in El Paso and I remember your remarks in that regard.

But from your job being the FBI Director, do you have any recommendations to us, to Congress, on how we can gain some form of operational control more so than what we have now, I think it is like 43 percent, maybe up or down, I am not sure, to make sure we are protecting Americans here at home?

Mr. COMEY. Yes, thank you. I don't have any great suggestions for you. The piece that the Bureau focuses on, especially in our counter-terrorism mission is to make sure that we have trip wires in place, so that if any terrorists are trying to use the border as a porous way to get into the United States, we get an indication of it. I have not seen it so far, but it is something we are laser-focused on because of the vulnerability there.

And so that is the Bureau's business to make sure all of our border offices are doing lots of things, but especially focused on if they have the sources and relationships in place to know if somebody gets wind that a terrorist is trying to come in that way.

So I think we are doing that in a good way, but I do not want to be overconfident, because it is a vulnerability and so that is why we have spent so much time worrying about it.

Mr. PALAZZO. Do you have a number that you could share with us, the people who have crossed our border that may have links to terrorism in other countries?

Mr. COMEY. I don't. It is very small, we have not seen it yet. Obviously, there are areas where those people who are smuggling humans or smuggling drugs try to smuggle terrorists, in an odd way we count on the fact that they know what would happen if the American people found out that a drug cartel was smuggling terrorists into the United States. So that actually acts as a deterrent, oddly enough, on the cartels from getting in that business. But, look, I do not sleep well at night counting on the cartels to act in a rational way.

So I do not have a number. It is very, very small. In fact, I don't know that in my two and a half years we have identified anybody coming in who we have confirmed comes in with an association with a terrorist organization.

Mr. PALAZZO. OK.

Mr. COMEY. Thank you.

Mr. PALAZZO. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you very much, Mr. Palazzo.

Mr. KILMER. Thank you, Mr. Chairman.

And I wanted to ask about something I know actually that Ranking Member Honda has worked a lot on and that is the increase in the level of reported violence against transgender people. The FBI's latest statistics suggest a very significant increase and there were more transgender homicide victims in 2015 than in any other recorded year, at least 21 transgender women, nearly all of them women of color, lost their lives to violence.

What is the FBI doing to address this increase in violence against transgender Americans and do you believe that you have the adequate resources to combat what is a very disturbing trend?

Mr. COMEY. Yes, there is no doubt it is a disturbing trend. I mean, homicide is up nationwide, but it is dramatically up among that vulnerable community.

So we are addressing it in two different ways, through our civil rights program that our criminal division runs, we focus on that expressly, and then we ask our 56 field offices to make sure they have relationships with state and locals and service providers who might know of people who are victims or likely to be victims, so that we can sort of bring that information in and respond to it.

And with respect to the question of resources, I don't know that we will ever have enough resources, frankly. But my sense is that in our civil rights program we have adequate resources to address what is in front of us.

Mr. KILMER. Thank you.

I know time is short, so I will yield back. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you very much.

Judge Carter.

Mr. CARTER. Director, many of my constituents back home in Texas have asked for reassurance that no individual or officeholder is above the law. Yesterday I spoke with the Attorney General and she indicated she was fully prepared to take up the case Hillary Clinton for mishandling the classified information should the evi-

dence so be available, and she also indicated that she was awaiting the conclusion of the FBI investigation.

I know your position on investigations, but do you have some estimate as to when you expect to have findings to the prosecutors of the DOJ, if there are any? And have you or your staff been under any undue pressure or influence to delay the presentation of the case?

Mr. COMEY. Yes. Thank you, Judge.

I cannot, in keeping with our normal practice, give anybody an estimate on timing, but I can tell you this. I am personally following this investigation, get briefed on it regularly, because I want to ensure that it is done in the ways that the FBI does its work, professionally, with integrity, promptly. We want all investigations to move promptly and without any interference whatsoever, and I can assure you it is all of those things. We have the resources on it, both people and technical. And I do not normally follow a lot of investigations, but I am following this to make sure it is done in the way the American people would want it done. I promise you that that is what is going on.

Mr. CARTER. This mike doesn't work? Sorry, you didn't get the question?

Well, I would expect nothing less. And this is very important, no matter how it concludes, that it be done very professionally and that we let the American people know none of us are above the law.

Mr. COMEY. I assure you that I have dedicated my whole life to that proposition and I am not about to change now.

Mr. CARTER. Me too. Thank you.

Mr. CULBERSON. Thank you, Director. We have great faith in your integrity and professionalism.

Mr. Honda.

Mr. HONDA. Thank you, Mr. Chairman.

Let me just preface my comments by saying I really do appreciate your job, I don't want it. [Laughter.]

Mr. COMEY. You can't have it for 7½ more years.

Mr. HONDA. You can have it. But having said that, you know, I understand that economic espionage is a real threat to American economic security and our ability to retain jobs here at home, but I am concerned that espionage threats from bad actors abroad are creating a climate in which both investigators and prosecutors here are jumping the gun into pursuing indictments against Americans who happen to be language minorities, raising the prospect of serious civil liberties violations.

For example, Ms. Sherry Chen, a Federal employee at NOAA, and Dr. Xiaoxing Xi, the chairman of the physics department at Temple University, were arrested by FBI agents on false and flimsy espionage charges, only later to have all charges dropped after some weeks, some months, after they lost their jobs and, you know, had been embarrassed and their reputations had been tarnished.

My colleagues and I in the Congressional Asian Pacific American Caucus have written letters to the Department of Justice asking questions about this issue, but our requests were not adequately addressed. And I just wanted to know what is it that you are doing to ensure that these factors, race, religion, ethnicity, or national or-

igin plays no role in the arrests your agency makes, including the idea that folks are speaking a language at work and that causing some sense of suspicion. And I think that, you know, has happened too often that we have to raise that question, I have to raise that question, and I would like some sort of response on that.

Mr. COMEY. Thank you, Mr. Honda. It is a reasonable question. The challenge I face is, I cannot explain what happened in individual cases, because I am restricted in what I can talk about, but I think I take your questions at the right level.

The way we ensure it does not happen is the kind of people we hire, the way we train them, the way we oversee them, and our interaction with the courts.

Mr. HONDA. OK.

Mr. COMEY. I am sorry.

Mr. HONDA. Let me just cut to the chase then. I think that we need to have a discussion on the process by which you are pursuing these kinds of cases and the thought process that you go through, I do not think that is classified. And so I look forward to having some sort of meeting with yourself, your staff and with CAPAC, and just hash this out, if you want in a closed session.

Mr. COMEY. Sure.

Mr. HONDA. But we need to know and there has to be some sort of an apology to these folks who have been put through this and losing their jobs. And we are trying to seek some sort of justice for these folks who have been unfairly targeted and this is not unlike some other cases in the past. And, you know, if we are going to have Americans of different backgrounds who are participating and proud of being Americans here, we have to have some sort of resolution on this.

So, Mr. Chairman, I thank you for this.

Mr. COMEY. And we would be happy to talk to you about it. Again, I cannot talk about individual cases. Implicit in your request for an apology is an assumption about cases that I can't comment on, unfortunately. So I can't—

Mr. HONDA. Well, these cases have been dropped.

Mr. COMEY. Right, but I can't comment on it beyond that. But we would be happy to talk to you about how we go through the process of thinking about our investigations.

Mr. HONDA. Thank you.

Mr. CULBERSON. Thank you.

Director Comey, we will submit the remainder of our questions to you in writing. But again, I want to thank you for your service to the country and we do indeed have complete faith in your integrity, your professionalism and your absolute objectivity in all that you do. We thank you for keeping us safe and standing on the walls of Rome to let us all sleep soundly at night. Thank you very much, sir.

And the hearing is adjourned.



**The Honorable John Culberson**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**FBI FY2017 Budget Request**

1. DNI Clapper testified that foreign intelligence will make it a top priority to penetrate the US Intelligence Community, and target US companies and research institutions to gain access to critical information related to "defense, energy, dual-use technology, and other sensitive areas." Given the damage done by externally based attackers in their efforts to compromise servers in the financial sector, NASA, and SCADA systems, an insider threat takes on greater import. How would you quantify or otherwise characterize the significance of the insider threat to our national and economic security?

**Answer**

When an insider discloses sensitive or classified information into the public domain without authorization, it can disrupt relationships as well as put intelligence sources and methods at risk. Today, many technological advances provide would-be leakers with anonymity, making the source of the leak difficult to track.

Additionally, economic espionage (EE) is a pervasive and growing threat to the U.S. economy, costing U.S. businesses hundreds of billions of dollars per year. The FBI has seen various industry sectors frequently targeted, including agriculture (genetically modified organisms), pharmaceuticals and medical equipment, and energy (oil and gas as well as clean/alternative energy).

Through FBI outreach efforts, the private sector has become more sensitized to the threat and, therefore, an effective partner to combat the EE threat. The FBI works closely with U.S. businesses to investigate and determine if suspected insiders are guilty of violating EE laws to include theft of Intellectual Property.

The FBI can provide additional information related to insider threat countermeasures in a classified setting upon request.

2. Will the requested funding increase, to include supporting continuous evaluation of security privileges, close known security gaps associated with oversight of such privileges? If not, is the FBI limited by legal authority or other non-resource constraints from further security enhancement?

**Answer**

The Continuous Evaluation (CE) Program is a Federal Government-wide mandate to continuously vet those with access to classified information within the IC and for the Top Secret/Sensitive Compartmented Information populations across the Executive Branch of the U.S. Government. The CE Program will leverage automated record checks and predefined thresholds to assist in determining an individual's eligibility for continued access to classified

information. CE is part of a larger clearance reform effort that aims to identify security risk information in a timelier manner for earlier intervention and mitigation. One of the critical components of this program is gaining access to the criminal records housed within the FBI's criminal justice information systems. The enhancement is targeted at addressing security gaps. Additional details of the enhancement can be discussed in a classified setting. In its report last year, the Task Force on implementing 9/11 Commission recommendations advocated giving priority to providing adequate secure facilities for the FBI's investigative and intelligence operations. However, the FBI request reflects a reduction in such funding, which seems inconsistent with the increase in counterterror national security and counterintelligence workload for the FBI and its offices. Can you assure us that your domestic and international worksites have adequate secure workspace to carry out national security and counterterror workload?

### **Answer**

The FBI's Secure Work Environment (SWE) Program provides Sensitive Compartmented Information Facilities (SCIFs) and Sensitive Compartmented Information Network (SCINet) access to FBI employees in FBI locations around the world. SCIFs and SCINet provide critical and secure connectivity to the Intelligence Community (IC). The FY 2017 President's Budget includes an offset of \$16.5 million from this program. With the remaining funding available the FBI will be able to maintain existing SCIFs and SCINet workstations. Further, the reduction will ensure that the SWE Program will focus its resources on priority field and Legat locations and improve capabilities to discuss, process, and store TS/SCI information. The SWE Program will leverage prior-year balances when and where necessary to continue to ensure that the FBI's TS network is not at risk. Other investments in infrastructure elsewhere in the FBI 2017 Budget request will help to ensure that there will be no negative impacts from this reduction to missions or operations.

3. The recent re-capture of "Chapo" Guzman is a reminder that transnational organized crime, in this case the Mexican cartels, has vast resources, both financial, logistical and institutional, and corrupts and weakens society with drugs and weapons. Such criminal enterprises are worldwide, engaging in smuggling, human trafficking, arms trafficking, and corruption of public institutions. The request includes an increase of \$6.8 million to pursue such crime by leveraging the resources of the Terrorist Screening Center to collect, analyze and share intelligence on key organized crime targets. How critical is this watch listing capability, and how will it improve the way we track, investigate and arrest such targets?

### **Answer**

The U.S. Government's current terrorist watch listing capability provides critical collection, analysis, and distribution of intelligence, which can be leveraged for TOC watch listing and screening. The Terrorist Screening Center's multi-agency watch listing, screening, and information sharing capabilities provide an established infrastructure and improved support network to enhance the identification and investigation of criminal activity associated with TOC. This approach supports the U.S. Government's counter-TOC efforts in alignment with the 2011 Presidential Strategy to Combat Transnational Organized Crime to "build, balance, and integrate the tools of American power to combat transnational organized crime and related threats to

national security." The \$6.8 million proposed increase will expand the current capabilities (via technical tools) to address the TOC threat by enabling the U.S. Government to better track TOC travel, and improve intelligence sharing, investigative deconfliction, and collaboration. TSC is currently conducting a TOC pilot that will include 8,000 nominations to the TOC watch list from FBI and DEA. The FBI must integrate and expand the TSC IT systems to accommodate the full execution of TOC watch listing and screening.

4. Last month DNI Clapper testified that homegrown extremists will "continue to pose the most significant Sunni terrorist threat to the US homeland". How is your request for \$8.2 million for 36 new positions to carry out surveillance going to enhance your capability to carry out your mission to address such threats? In this era of high-tech equipment and systems, is there any substitute for physical, human surveillance?

**Answer**

Physical surveillance is a fundamental investigative capability the FBI uses to identify, deter, and neutralize threats to the security of our Nation and continues to be one of the FBI's highest priorities. The requested enhancement will improve the FBI's ability to conduct physical surveillance on the highest priority targets.

The FBI can provide additional information related to the additional surveillance methods in a classified setting upon request.

5. A recent Brookings Institute report used social media metrics to map the geographical distribution of Islamic State supporters, and found a small, but significant online support base for ISIL supporters in social media accounts that could be located in the US and UK – both high value IS targets. And a Belgian official was quoted last week (in lamenting the challenges faced by a small Belgian government and the huge open investigation caseload) that "we don't have the infrastructure to properly investigate or monitor hundreds of individuals suspected of terror links, as well as pursue the hundreds of open files and investigations we have." It is reasonable to consider whether such concerns could also apply to the FBI and its partner agencies. Director, you have said the FBI has Homegrown Violent Extremist investigations underway in each of its field offices. Does FBI have sufficient resources in domestic and overseas field offices to meet the terrorist threat, including personnel, operating costs, and secure workspace?

**Answer**

The Counterterrorism Division of the FBI is aware of a significant number of terrorism supporters in the United States. The FBI works to identify individuals that have travelled to a terrorist controlled territory and individuals that have a connection to terrorist-sponsored social media. The FBI regularly monitors and prioritizes threats as they appear and will identify additional requirements in future budget requests as necessary. The FBI can provide additional information related to prioritizing the terrorism threat in a classified setting upon request.

6. Your request calls for \$27 million for equipment and services to upgrade FBI IT capability and interoperability with the Intelligence Community. Will this upgrade align the FBI up to speed

with the rest of the IC, and ensure seamless communication? Is it a one-time investment, or will this level of funding recur in future years?

**Answer**

The FBI's objective is to technically integrate with the Information Technology Environment (IC ITE). Achieving this objective is dependent on several factors, including:

- Completed analysis of the FBI's Desktop Environment (DTE) requirements
- Funding to fully migrate to IC ITE DTE
- Development and delivery of a customized technical solution to meet unique FBI requirements.

Some funding identified in the FY 2017 President's Budget for IC ITE will recur in FY 2018 and FY 2019. Out-year funding will depend primarily on the status and availability of information technology capital and service investments and the transitioning of qualified FBI users to the new platform.

7. What is the FBI currently spending on its investigations of trafficking and forced labor of persons in FY16 and what is projected in FY17? Does this include funding victim witness coordinators? In such cases, please describe how the FBI works to identify potential victims of trafficking and forced labor; how it helps direct such victims to appropriate assistance; and uses "Continued Presence" for to facilitate investigations and victim recovery?

**Answer**

The FBI currently projects spending approximately \$86 million for human trafficking and Innocence Lost investigations in FY 2016, and approximately the same amount in FY 2017. Separate from the FBI Civil Rights Unit funding for investigations, the FBI Office for Victim Assistance supports 181 full-time Victim Specialists at a cost of \$15 million (for which it is reimbursed through the Crime Victims Fund) within its 56 field offices.

**Identifying Potential Victims:**

To effectively identify potential human trafficking victims and investigate human trafficking violations, the FBI leads or participates in over 70 Child Exploitation Task Forces (CETFs), and over 100 human trafficking task forces and working groups. In these task forces and working groups, the FBI partners with other federal, tribal, state, and local law enforcement agencies as well as their respective victim services components. CETFs address child sex trafficking through routine investigations, conducting operations during special events, and Operation Cross Country (The mission of Operation Cross Country is to recover children from sex traffickers and coordinate victim services for identified victims), which is a coordinated national law enforcement action conducted once a year. These efforts often require working with various Non-Government Organizations (NGOs) to ensure the rescued individuals are provided with whatever is necessary to restore their human dignity, irrespective of their willingness to cooperate in prosecution efforts.

Due to the complexity of many human trafficking investigations, the FBI routinely uses a number of sophisticated investigative techniques authorized under the law to dismantle human trafficking organizations. The FBI takes an intelligence-driven approach to investigations. The FBI assigns Intelligence Analysts to assess human trafficking data, enabling proactive investigations to be conducted based upon an analytic review of current and past trafficking data.

Recognizing that labor trafficking is often difficult to identify, the FBI Civil Rights Unit (CRU) will launch a new Labor Trafficking Initiative during the third quarter this year to provide the FBI field offices with a proactive strategy to broaden awareness and identify potential labor trafficking victims through enhanced intelligence collaboration and strategic outreach.

#### **Victim Specialists:**

The FBI utilizes a victim-centered approach in its human trafficking investigations to ensure timely coordination of services for the victims. FBI Victim Specialists work in partnership with FBI Agents to assess the needs of victims in FBI investigations and to provide victims with crisis support services. Victim Specialists will, as appropriate and indicated, provide referrals to community resources that may include immigration and legal assistance; mental and medical health services; shelter and housing; education and job skills training, and other agencies that specialize in assisting victims of human trafficking. Once an agent identifies a person as a victim of "severe form of trafficking", per the Trafficking Victim Protection Act (TVPA), the victim is eligible for Continued Presence (CP), a temporary immigration status provided to individuals identified by law enforcement as victims of human trafficking. This status allows victims to remain in the U.S. temporarily to assist in the ongoing investigation into the human trafficking-related crimes committed against them. The Bureau encourages agents to involve their Victim Specialist early in the process to assist with the CP application process and to connect the human trafficking victims to resources and services in their community.

8. Please provide information about FBI Innocence Lost Taskforce operations in fiscal year 2015, to include the number of arrests of (1) (a) potential traffickers, (b) adults or (c) minors on prostitution charges, and (2), placement and social service support for children as a result of State operations.

#### **Answer**

In FY 2015, the FBI made over 2,000 arrests related to child sex trafficking. When an under-aged victim is recovered, Victim Specialists make a report to the state or local Child Protective Services (CPS) agency or local law enforcement agency that has the legal authority to take custody of the minor and make arrangements for an appropriate and safe placement for the minor based on requirements and resources in that jurisdiction. In many communities, CPS is a member of the human trafficking multi-disciplinary teams (MDTs) that review cases and coordinate comprehensive services needed for each minor. Victim Specialists assist CPS throughout the case with identifying resources that specialize in trafficking, not only in the community but throughout the country. Victim Specialists provide training to CPS about trafficking, victim assessment/identification, and the frequent need for the adjustment of traditional services to most

effectively meet the situations and needs of these victims. For example, placement in youth shelters or emergency centers may work well for most runaway and thrown away minors, but can be risky for under-aged victims of sex trafficking who may try to recruit other minors or run away back to a pimp on whom they are dependent.

**The Honorable Robert Aderholt**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**FBI FY2017 Budget Request**

Last year at this hearing, I raised the issue of smartphone encryption. Since then, this issue has grown exponentially, primarily in light of the San Bernardino shooting in late 2015. I am grateful for the leadership of you and the FBI have taken to outline law enforcement's concerns about this issue.

1. Has the FBI's position on smartphone encryption changed in the last year?

**Answer**

The FBI's position on encryption remains unchanged. It is important for our global economy and our national security to have strong encryption standards. The development and robust adoption of strong encryption is key to secure commerce and trade, safeguard private information, promote free expression and association, and strengthen cyber security. The benefits of our increasingly digital lives, however, have been accompanied by new threats, and we have been forced to consider how criminals and terrorists might use advances in technology to their advantage. When changes in technology hinder law enforcement's ability to exercise investigative tools and follow critical leads, we may not be able to identify and stop terrorists who are using social media to recruit, plan, and execute an attack in our country. We may not be able to root out the child predators hiding in the shadows of the Internet, or find and arrest violent criminals who are targeting our neighborhoods. We may not be able to recover critical information from a device that belongs to a victim who cannot provide us with the password, especially when time is of the essence.

2. Do you have any estimate of how many pending cases that the Bureau is involved in - either directly or through assistance offered to state and local LEOs - are impacted by smartphone encryption?

**Answer**

In terms of assistance to state and local LEOs, over a 4-month period beginning October 1, 2015, the FBI, through its Computer Analysis Response Team (CART) and Regional Computer Forensic Laboratory (RCFL) Programs, received requests from state and local law enforcement to provide technical assistance on more than 500 cell phones. These requests involved a wide variety of cell phone forensic services addressing locked phones, deleted data, encrypted content, damaged hardware, and other challenges. Encryption was encountered in approximately 39% of the State and Local cell phone examination requests. This figure represents state and local examination requests that includes a variety of different types of investigations. The FBI is

happy to provide additional information on this breakout in a classified setting.

3. Do you have any information that you can share with the Committee about the ongoing damage done while law enforcement waits to have this matter resolved (by the courts/Congress/executive action)?

**Answer**

Related to the Apple litigation, damage comes in the form of delays to an ongoing terrorism investigation. The FBI had reason to believe that Syed Rizwan Farook used his work iPhone to communicate with the people he murdered. It was believed that the phone contained communications and data prior to and around the time of the shooting. In this case, with the help of an outside source, the FBI was ultimately able to access the contents of the phone, the impact of which has yet to be determined, but it took nearly four months to do so.

4. Without divulging any sensitive information, could you please give the Committee a range of the types of cases that have been impeded by this encryption?

**Answer**

Encrypted communications are used for nefarious purposes by all manner of criminals. In addition to terrorism cases, malicious actors take advantage of the Internet to covertly plot violent robberies, murders, and kidnappings. Sex offenders establish virtual communities to buy, sell, and encourage the creation of new depictions of horrific sexual abuse of children. Individuals, organized criminal networks, and nation-states exploit weaknesses in our cyber-defenses to steal our sensitive, personal information.

5. I asked this question last year and will reiterate it now: Does the FBI need additional resources from this Committee to address this situation? If so, please let the committee know what those may be.

**Answer**

The FY 2017 President's Budget request includes an additional \$38.3M to counter the threat of Going Dark. The funding would help address the inability to access data because of challenge related to encryption, mobility, anonymization, and phone applications. The FBI would appreciate support for the request.

6. Has the FBI partnered with any other federal agency, such as NIST, on the technology side of the encryption issue - to break the encryption, use brute force, create a "backdoor", etc.?

**Answer**

The FBI maintains collaborative partnerships with our Intelligence Community (IC), law enforcement (LE), and international partners to develop and share technical strategies for overcoming significant counter-encryption challenges. For example, FBI is currently engaged

with the National Oceanic and Atmospheric Administration (NOAA) to utilize a portion of their supercomputing resources for a short time. In another example, the FBI is currently engaged in a research and development effort together with CIA, NSA, MIS, and other agencies to address the encryption matter. To the extent possible, tools and techniques are provided to law enforcement, helping them overcome device, application, end-to-end, and other encryption and secure device challenges.

#### **Additional Background Information:**

With rapid advances in secure technologies, the challenge to develop necessary evidence recovery methods is increasing. For example, in some instances the cryptographic protections Apple utilizes for product integrity obstruct evidence recovery altogether. Such technical obstructions fundamentally alter evidence recovery processes, as methods of recovering a subject's passcode may be applied only after breaching the product's security features.

When left with no other means of getting past device security, law enforcement must seek vulnerabilities in order to access evidence. These vulnerabilities cannot be shared with industry partners, because doing so would result in patches which leave law enforcement unable to access vital evidence to support investigations.

A government-industry relationship should be built upon the realization that, at a fundamental level, each party's goals are complementary, rather than opposing. The innovation apparent in the explosive growth of information, and information security technologies, may be leveraged through code signing and partnership, to create new technologies that blend law enforcement solutions with emerging products and services.

The existence of solutions in this category is proven; the benefits of this approach remain unexplored. A technology landscape where law enforcement capabilities are intrinsic to the endpoint technologies, rather than ad-hoc, enables diversity and agility for both law enforcement and industry. This condition is essential if we are to maximize law enforcement and industry successes. With law enforcement as a partner, rather than an adversary, vendors could benefit from notification of vulnerabilities identified during investigations. The FBI is actively exploring the viability of cryptographic standards that allow for strong encryption, while preserving the ability for industry and law enforcement – working together – to overcome device security when ordered by the courts to do so.

7. Does the FBI have an opinion about the proposal from Chairman McCaul to form a commission to address this issue?

#### **Answer**

The FBI has not taken a position on this proposal.

8. Some commentators have suggested that, instead of creating a "backdoor" that makes all devices accessible, Apple instead break the code on this particular device and provide its total data package to the FBI, to comply with the investigation. Such an action would be a substitute for



giving government a "backdoor" key to all devices. What is your opinion of such a possible compromise?

**Answer**

Ultimately, the US Government wants providers to be in a position to comply with a court order. The providers are the technical experts and know the details of their system, and therefore, are best positioned to determine the method of compliance. In the case of Apple, the order did not require Apple to create a backdoor to every iPhone. As noted in the filing, the order allowed Apple to retain custody of its software, provided flexibility in the manner in which it provided assistance, and did not require the software to ever enter the government's keeping.

**The Honorable Jaime Herrera Beutler  
Subcommittee on Commerce, Justice, Science, and Related Agencies  
Questions for the Record  
Federal Bureau of Investigation FY 2017 Budget Request**

1. Has the FBI taken down any internet sites that facilitate sexual exploitation of girls and young women since MyRedbook.com?

**Answer**

Investigating and prosecuting human trafficking remains a top priority at the FBI and throughout the Department. The FBI continuously assesses various online platforms/websites for their involvement with child sex trafficking and works to prosecute those whose business purpose is in violation of relevant federal statutes. As to your specific inquiry, the Department generally does not comment on the status or existence of ongoing law enforcement efforts or provide non-public information about ongoing investigations or matters. Therefore, we are not in a position to provide more specific information at this time because doing so may undermine law enforcement efforts by prematurely disclosing our interests in particular matters. The FBI continuously assesses various online platforms/websites for their involvement with child sex trafficking and works to prosecute those whose business purpose is in violation of relevant federal statutes.

2. When a victim of sex trafficking is identified, what services do they receive? Is there case management and how long are services provided?

**Answer**

The role of the Victim Specialist is to work in partnership with FBI Agents to assess the needs of potential victims in FBI investigations, provide referrals and personnel resources to these victims, keep the victim informed of any case status updates throughout the criminal investigation, and liaison with partner agencies to meet the needs of the victim. Sex Trafficking survivors often have very individualized needs. While the FBI itself does not, the non-government organizations in some communities offer case management. The FBI Victim

Specialist does not act as a case manager, but is often involved with the victim for a significant period of time, coordinates with services providers, and advocates for the victims and assists in the transition of services. The Victim Specialists are often a consistent presence in the victim's life and may continue to provide encouragement and resources as the victim minor navigates his or her way to independent living.

3. In what ways does the trafficking of males differ and are stings being set up to catch perpetrators? What services are available for male victims?

**Answer**

The resources for male victims are limited compared to female victims. It is often very difficult for female victims to get therapeutic residential placement; however, for male and transgender victims, there are even fewer beds. The needs of male and female victims for medical, mental health and other services are similar but their availability and breadth vary greatly by community. The Bureau encourages Victim Specialists to provide education within their community about the issues to raise awareness and advocate for enhanced response. In some communities, professional networks have been established, from dentists to hair dressers, who will provide their services at a reduced cost or often at no charge for victims. The FBI has also been working with the National Center for Missing and Exploited Children, Innocence Restored, and Awaken Inc. to provide gender neutral hygiene bags at the time of recovery for the male and transgender victims recovered during operational and investigative efforts.

4. I recently learned about an innovative approach to curb demand in my home State of Washington. A coalition of law enforcement, prosecution, and nonprofit organizations monitored websites in King County and discovered the following results: Backpage.com posted 25,000 ads for sex in King County, per month during July-September, 2015, including ads for minors. As a result of doing the work to discover the size of the market in an effort to address it, they learned there are more than 130 websites where sex can be purchased in King County, alone. The Sheriff, local police and FBI also recently took down "the Review Board," a website with 15,000 to 20,000 members that reviewed sex acts on line. But it's important to remember that this is happening everywhere. I'm pleased that the FBI participated in these efforts, but what else is the FBI doing to proactively and aggressively curb the huge demand for sex from children around the country?

**Answer**

Each of the FBI's 56 field offices proactively addresses the child sexual exploitation threat. In addition, the FBI uses its Child Exploitation Task Forces to address child sex trafficking throughout the year through routine investigations. The Bureau conducts operations during special events, and Operation Cross Country, which is an annually coordinated national law enforcement action. The mission of Operation Cross Country is to recover children from sex traffickers and coordinate victim services for identified victims.

As a recent example, during Super Bowl 50 in San Francisco, California, the FBI worked closely with both state and local law enforcement to address child sex trafficking through joint

operations that addressed both the demand for child sex trafficking and child sex traffickers.

5. There has been a lot of news about the dark web and encrypted phones related to terrorism. It is also a serious issue for law enforcement trying to track exploited children. If the exploiters use encrypted phones, law enforcement can't track the kids. How often are encrypted phones a barrier in cases involving sexually exploited kids, and what is the extent of this problem in terms of sexually exploited individuals?

**Answer**

During the first two quarters of FY16, the FBI obtained 603 cell phones related to cases involving exploited children/individuals. Of these, 459 (76%) were not protected with a passcode; 90 (15%) were protected with a passcode that the FBI was able to bypass; and 54 (9%) were protected with a passcode that the FBI was unable to bypass. The FBI was unable to examine this latter set due to encryption. The FBI is always working to identify new commercial and governmental solutions for accessing digital media. As new techniques become available to access devices, we review the devices held in evidence to see if, consistent with legal and policy requirements, the new solutions can be used to access them. Unfortunately, techniques are not available for all devices. The FBI will be happy to provide additional information in a classified setting.

6. Multiple schools in my district received seemingly coordinated, disturbing, and immediately threatening calls. To my surprise there had been no coordinated tracking and investigation related to the threats in the state of Washington. My office reached out to the FBI to alert them, and to get their assistance in this matter. At the time it was unclear if the threatening calls to schools in my district were the first of their kind. School officials made calls and conducted Internet searches, and discovered they weren't the first. This discovery was concerning since law enforcement seemed to be largely unaware. Then, we discovered there were threatening calls made in other states. It is my understanding that these calls are still occurring around the country. While they have just been threats so far, calls like these spread panic throughout the community and impact students' learning. What is the FBI doing to investigate these threatening calls? Are you working with all affected jurisdictions and keeping them updated?

**Answer**

Earlier this year, the U.S. began to see an increase of hoax bomb threats, and other threats of violence toward educational institutions, law enforcement agencies, transportation facilities, local government facilities and private institutions. The FBI currently has 45 active investigations across 22 field divisions involving hoax bomb threats to educational institutions. The FBI is collaborating with state and local law enforcement on these matters. FBI field offices conduct training and provide briefings to state and local law enforcement agencies on these type of threats. FBI field offices routinely work jointly with state and local counterparts and routinely share information and leads, and provide technical support in areas such as Computer Analysis Response Team (CART) review, cyber investigative techniques, and evidence recovery and collection.

All school threats received by the FBI are treated as priority until vetted to determine the nature and imminence of the threat. Upon receiving a school threat complaint, the FBI immediately coordinates with the local, state and federal law enforcement agencies within their area of responsibility to collaborate and mitigate the threat. The recent hoax calls are being conveyed using Voice Over Internet Protocol (VOIP, i.e. Skype, Google Voice etc.), email, and other social media platforms (i.e. Twitter, Instagram etc.). In nearly all cases, the subject(s) utilized publicly available IP anonymizers. Complicating matters, subject(s) convey the threats hidden behind IP anonymizers and use VOIP applications such as VoxOx to spoof unwitting victim telephone numbers. This results in investigators initially identifying false subjects and chasing dead end leads. In order to locate and identify potential subject(s) the FBI is required to serve numerous legal processes, such as emergency disclosures and Grand Jury subpoenas. In some cases, if the threat is suspected of originating overseas, Mutual Legal Assistance Treaty requests are required to obtain information from our foreign partners. Often, the subject(s) are never identified in these investigations. Additionally, the phenomenon of "SWATing," wherein the subject calls E-911 and falsely reports an imminent violent crime, has put first responders in the difficult position of expending significant resources at considerable risk on threat calls which are likely to be hoaxes.

**The Honorable Steven M. Palazzo**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**FBI FY2017 Budget Request**

- 1) Does the Gulfstream V currently owned by the FBI meet the required operational availability necessary to fulfill its mission?

**Answer**

The FBI owns a Gulfstream V (GV) (purchased from the Air Force in 2001) and leases a G550. Both aircraft are used to meet the FBI's foreign transfer of custody missions, operational support deployments (including international evidence collection), and executive transportation for "required use" travelers such as the Director and the Attorney General. While both aircraft are fully functional and meet the operational and mission requirements of the FBI, the aircraft's age necessitates frequent maintenance work.

- 2) Does the Bureau have plans in place to upgrade from the Gulfstream V to a more efficient and operationally ready aircraft to meet its requirements?

**Answer**

The FBI is looking at options to replace the owned Gulfstream V (GV) with a newer aircraft in the next two to five years. The increase in international operations may necessitate the need for a more efficient and operationally ready aircraft to meet FBI mission requirements. Based upon

careful analysis of mission requirements and what represents the best value to the government, the FBI will determine whether to purchase or lease a replacement aircraft.

**The Honorable Michael Honda**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**FBI FY2017 Budget Request**

- 1) With the \$86 million available for law enforcement to test the backlog of sexual assault kits, there is a lot of work being done across the United States, in large part by certified private labs. The concern remains that requiring 100% technical review of private lab work will cause extensive backlogs of DNA profiles identified through testing, but not yet entered into the databases. A pilot program that would require a review of a statistically acceptable percentage of the reports would speed up the process of uploading DNA profiles into CODIS.

What assurances does the Director need to feel comfortable approving a pilot program that would allow for less than 100% technical review of the reports prepared by private, contract lab(s) certified or accepted by the FBI crime Lab? What is the time frame for reaching this decision point?

**Answer**

The FBI is charged with maintaining the integrity of the Combined DNA Index System (CODIS) / National DNA Index System (NDIS) database and would have concerns about private laboratories uploading directly into the database for a few reasons:

- The database contains biometric information on U.S. citizens, which raises privacy concerns as well as sensitive law enforcement information.
- Governmental oversight would have to be enhanced for private laboratories to ensure that they are subject to the same oversight as public laboratories. Finally, public labs must have sole control over what goes into the system since they testify to its accuracy and are held accountable for any mistakes.

The FBI has continuous dialogue with state and local jurisdictions requesting exemptions from the 100% technical review of private laboratory work. Over the past few years, the FBI has made several concessions. One example is providing states the flexibility to search DNA records generated by a private laboratory at the state level. Previously, the FBI standards prohibited searches of outsourced DNA data in CODIS prior to completion of a laboratory's technical review of that data. Now that search is permitted at the state level, which provides potential investigative leads while allowing laboratories to prioritize the review of those samples in a match. While a technical review of the outsourced DNA data is still required for upload into CODIS/NDIS, the search could expedite potentially valuable intelligence. In addition, FBI modified standards to expand a laboratory's options for who can perform the required technical review by authorizing approved contract employees to serve as technical reviewers. The FBI will continue to work with state laboratories to ensure the most efficient and effective methods are in

place to eliminate any backlogs and will continue to evaluate the quality assurance standards, and when appropriate, modify them based on sound reasoning.

- 2) Through the H.E.A.T. Institute in California, we are seeing how effective efforts to end human trafficking have been when the FBI and local law enforcement, along with other strategic partners, are actively joined together.

Does the FBI have any plans to increase its role in Local and Regional Task Forces addressing human trafficking, especially the commercial sex trafficking of minors?

### **Answer**

The FBI recognizes the most effective way to investigate human trafficking and child sexual exploitation violations is in a collaborative, multi-agency environment. To foster such an approach, the FBI currently leads or participates in over 70 Child Exploitation Task Forces and more than 100 Human Trafficking Task Forces and working groups where the FBI works collaboratively with law enforcement partners at the federal, tribal, state, and local level. These task forces and working groups currently exist in all 56 FBI field offices. Additionally, the FBI partners with various nongovernmental organizations, including victim advocacy groups, family service agencies, service providers, legal aid agencies, immigration advocates, and detention facilities. The FBI continually works with our partners to assess the need to enter into new local or regional task forces to address this threat.

In 2003, the FBI implemented the Innocence Lost National Initiative (ILNI), with support from the Department of Justice's Child Exploitation Obscenity Section and the National Center for Missing and Exploited Children (NCMEC), to address children recruited into sex trafficking.

The ILNI initially focused on 13 cities that reported high rates of child sex trafficking, but the ILNI now conducts operations nationwide. Under the ILNI, the FBI conducts Operation Cross Country annually. The mission of Operation Cross Country is to recover children from sex traffickers and coordinate victim services for identified victims. The FBI, in coordination with federal, state and local law enforcement partners, routinely uses a myriad of sophisticated investigative techniques, authorized under the law, to dismantle domestic sex trafficking organizations. The FBI also uses an intelligence-driven approach to identify and target traffickers who sexually exploit children for financial gain.

TUESDAY, MARCH 22, 2016.

## **DRUG ENFORCEMENT ADMINISTRATION**

### **WITNESS**

#### **HON. CHUCK ROSENBERG, ACTING ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION**

Mr. CULBERSON. The Commerce, Justice, Science Appropriations Subcommittee will come to order. It is a privilege to us to welcome today Chuck Rosenberg, Acting Administrator of the Drug Enforcement Administration, to present the fiscal year 2017 DEA budget request.

The DEA leads the fight nationwide to fight the supply of illegal drugs and is a key partner in tackling demand. The DEA's unique position in law enforcement enables it to address many different threats, including heroin; prescription and opioid abuse; methamphetamine and marijuana production and abuse; regulating doctors, pharmacies and manufacturers; combating drug cartels, violent gangs, organized crime, Taliban drug lords, and narcoterrorists. Your plate is full, sir. And we really appreciate your service and that of your agents.

You have had a tremendous number of challenges in recent years, including international threats, workforce and management challenges. However, the DEA continues to serve as a bulwark against the criminal forces who use drugs and addiction to damage communities and weaken public institutions and finance massive criminal and terrorist organizations as well. The Committee is immensely grateful to you, sir, and the men and women of the DEA for their contributions to public safety and security and we intend to help find the resources that DEA needs to carry out its critical work.

At the same time DEA must work within the fiscal reality of tight budgets and must address its workforce and management challenges. Before we proceed, however, let me recognize Mr. Honda for his comments.

Mr. HONDA. Thank you, Mr. Chairman, and as we begin our final hearing of the season for the CJS Subcommittee, I just want to say that I appreciate our collaboration throughout this whole process. I look forward to working together to craft a strong, bipartisan CJS appropriations bill that will reflect our mutual interests, along with those of our colleagues of the subcommittee.

And I thank you and welcome, Mr. Administrator Rosenberg. It is a pleasure to have you join us this afternoon to discuss your work and your budget request. I would also like to personally thank you and the dedicated men and women at the Drug Enforcement Administration who work tirelessly to protect the American people from illegal drug abuse and trafficking. And I would like to

especially acknowledge the hard work of Chairman Culberson and Chairman Rogers who have been real leaders in focusing attention on the opioid epidemic that has swept across this nation.

They are doing their best to combat this scourge to our constituents and the American people. And with that being said, I am eager to learn about the DEA's thoughts on a number of issues, including the war on drugs, medical marijuana, the use of life-saving drugs to counter opioids and other narcotic overdoses.

Thank you again, Administrator Rosenberg, and I look forward to hearing your testimony. Mr. Chairman.

Mr. CULBERSON. Thank you, Mr. Honda. I recognize the chairman of the full committee, Mr. Rogers.

The CHAIRMAN. Thank you, Mr. Chairman. Administrator, welcome to the hearing. I think this is your first appearance before the Committee. I recall our conversation in December before the omnibus discussing our shared commitment to combating the drug abuse plague that has hit my home state and the country for far too long.

Your vast experience across Justice suits you well, I think, for your role at DEA. The men and women of DEA serve admirably in increasingly trying times for narcotics officers nationwide. Their service on the front lines of the war on drug trafficking, whether along our southern border or the hills of Appalachia, is an essential part of the broader national security and public safety campaign. I look forward to working with you to build upon your success.

In that vein, let me applaud you for your discipline in assembling a responsible budget request this year, seeking a one percent increase to \$2.1 billion. So often agencies come to us with dream budgets that simply are not realistic. But your request gives us a clear picture of your priorities: cyber security, your new 360 Strategy, and maintaining adequate staffing levels.

As we talked a few months ago, the drug epidemic has evolved at an alarming rate since I first came to Congress. Since then, the abuse of prescription painkillers and heroin have ravaged our small Appalachian communities. We fought back with a holistic approach that incorporates both law enforcement and prevention. As you know an organization called UNITE (Unlawful Narcotics Investigations, Treatment, and Education) has done phenomenal work in Kentucky with this very strategy. In addition to their important work engaging with our youth to prevent substance abuse on the front end, they have forged robust partnerships with local and Federal law enforcement agencies, especially DEA, to put over 4,300 drug pushers in jail, crack down on unscrupulous doctors, and confiscate hundreds of thousands of diverted prescription drugs. In fact, at this very moment three UNITE task force agents are assigned to DEA interdiction units in Eastern Kentucky. Together, UNITE and DEA have had tremendous success with their Take-Back Days seizing over six tons of drugs nationwide since 2012 and more than 1,800 pounds just last September. I have no doubt that replicating this type of effort in your new 360 Strategy pilot cities will yield positive results, and I am grateful that you will be providing additional insight about this initiative at Operation UNITE's National Prescription Drug Abuse and Heroin Summit in Atlanta next week. We look forward to hearing from you there.



The importance of taking UNITE's holistic approach to the national stage has never been more clear. More than 100 people each day die from opioid and heroin overdoses alone more than we can fit in this room. We have to redouble our efforts to stop this needless loss of life and take back our communities. DEA, of course, is a big part of that. As I mentioned, I am greatly interested in this new 360 Strategy, which will focus on driving down the surge of heroin by attacking the supply chain, strengthening diversion control, and partnering with community leaders.

What I particularly appreciate about this initiative is its holistic approach. I have repeatedly advocated for a broad three-pronged strategy in which enforcement, treatment, and education work in unison to combat substance abuse. It would be easy to arrest the drug dealers victimizing our citizens and claim victory. But the reality is much more complex, of course. By broadening your partnerships with communities across the nation you will be working hand in hand with the people closest to the problem.

Before I conclude, Mr. Director, I would be remiss if I did not express my continued disbelief at the administration's disregard for the Controlled Substances Act. Despite changes in popular perception in some parts of the country, marijuana remains an addictive drug with significant short and long term health consequences to its users. It is against Federal law to consume, possess, or distribute marijuana. Former Deputy Administrator Harrigan himself said that the administration should not abandon the science regarding this harmful drug and I look forward to hearing what the DEA is doing under your watch to fully enforce that law.

Thank you again to you and your agents, for your steadfast dedication to the problem. I look forward to hearing from you.

Mr. CULBERSON. Administrator Rosenberg, you are recognized for an opening statement and, without objection, your written statement will be entered into the record in its entirety. And I welcome your testimony. To the extent you can summarize it within five minutes it would be terrific. Thank you very much.

Mr. ROSENBERG. I believe I can. Thank you, Chairman Culberston, Chairman Rogers, Ranking Member Honda, and members of the committee. It is a privilege and a pleasure to be here today. It is also a privilege and a pleasure to represent the DEA.

I have spent my professional adult life in Federal law enforcement. But I am new to drug enforcement and so I recognize that I have a ton to learn. One way I have tried to do that is by visiting our men and women around the country. I have been to 48 offices so far in my first ten months. And I have learned a few things that have surprised me, a few things that have pleased me, a few things that have shocked me.

I had no idea when I started this, despite my background in Federal law enforcement, that 47,000 people died last year of a drug overdose. You alluded to that, Chairman Rogers. About half of that number from opioids, another 8,000 or so from heroin, about 130 people a day. If we meet for two hours that will be another ten people dead of a drug overdose somewhere in the United States. Those numbers are absolutely stunning. And I think sometimes in our lexicon we use words of exaggerated meaning, historic or unprecedented or unique. But I actually think this is an epidemic. I think

that is precisely what it is, an epidemic. And as you pointed out, Chairman Rogers, we need a holistic approach to it.

We have to do our law enforcement thing. We have to attack the supply side. But even when I was a baby Assistant U.S. Attorney in the Eastern District of Virginia, I never believed that we would prosecute or jail or enforce our way out of this mess. And I believe that as firmly today as I did then. We need to approach it in a 360-degree holistic way, meaning through diversion, making sure that the drugs that are in the legitimate chain of commerce stay in the legitimate chain of commerce, and of course through education and treatment and prevention, something we historically have not paid enough attention to. And I am trying to change that, albeit within a limited budget.

We are five percent of the world's population as Americans and consume 99 percent of the world's hydrocodone. And so I guess we should not be surprised that the connection between pills and heroin is as strong as it is. Four out of five heroin users started on pills and many folks who use or abuse pills get it from a medicine cabinet or a friend or an aunt or an uncle or a relative. And that is why we have reinstituted our National Take-Back Program. You gave the aggregate numbers. I will break it down a little bit, if I may. In September of last year we took in 749,000 pounds of unwanted and expired drugs. Now by some estimates only ten percent or so are opioids. But even if that is true, and even if it is "only" ten percent, that is still about 74,000 pounds of opioids.

So we think we are making a difference. We are going to continue these programs. Our next Take-Back will be April 30th of this year, so not that far away, about five weeks. And if it is like our last Take-Back Program it will be in 5,000 communities around the country. We have a lot to do. And we have less to do it with.

Over the last five years we have lost about 860 people, about 350 of those were special agents. So we have made I think a reasonable and modest request. I think the President's budget for the DEA is a good one. And we will continue to spend the money that you give to us I hope wisely and carefully. But we have a lot to do.

I am grateful for the opportunity to be here. I look forward to answering any questions you may have.

[The information follows:]

STATEMENT OF  
THE HONORABLE CHUCK ROSENBERG,  
ACTING ADMINISTRATOR  
DRUG ENFORCEMENT ADMINISTRATION  
BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON COMMERCE, JUSTICE, SCIENCE  
AND RELATED AGENCIES

March 22, 2016

Good morning Chairman Culberson, Ranking Member Honda, and other distinguished Members of the Subcommittee. I am honored to appear before you today to discuss the President's Fiscal Year (FY) 2017 Budget for the Drug Enforcement Administration (DEA), a globally recognized organization of more than 9,000 employees. The men and women of the DEA embody courage, integrity, compassion, service and diversity in the pursuit of our vital mission to disrupt and dismantle violent and dangerous drug trafficking organizations that prey on our communities and our citizens. As we strive to improve how we do business, we are reviewing how we best allocate our resources, how we develop and evaluate our leaders and how we better prepare DEA for the challenges that are ahead.

Drug overdoses are now the leading cause of injury-related deaths in the United States, eclipsing deaths from motor vehicle crashes and firearms by about 50%.<sup>1</sup> There were more than 47,000 overdose deaths in 2014, or approximately 129 per day. More than half of those deaths (61%) involved either a prescription opioid or heroin.<sup>2</sup> We also see the effects of synthetic drugs, which pose a significant danger to our youth who are unaware of their deadly consequences. These drugs, along with cocaine, methamphetamine, and others, pose a constant threat to our communities and to the health and welfare of our citizens.

At DEA, we are committed to wisely using taxpayer resources to battle this crisis, constantly taking stock of our international and domestic efforts and how we can improve our tactics and programs to better serve our citizens. Every day DEA works to counter the threat to the United States posed by drug cartels in Mexico; sources of supply in South America; drug financiers and facilitators in Europe; transshipment and distribution coordinators based in West Africa; insurgency groups operating in Southwest Asia; non-controlled synthetic designer drugs (K2 and Spice type drugs); and domestic distribution cells operating in cities across the U.S. Regardless of the source of the threat, DEA is the

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<sup>1</sup> Centers for Disease Control and Prevention, Web-based Injury Statistics Query and Reporting System (WISQARS) [online], (2014), *available at*: <http://www.cdc.gov/injury/wisqars/fatal.html>.

<sup>2</sup> Rose A. Rudd, Noah Aleshire, Jon E. Zibbell, R. Matthew Gladden. Increases in Drug and Opioid Overdose Deaths – United States, 2000-2014 Morbidity and Mortality Weekly Report, 2016; 64:1378-1382.

federal law enforcement leader in combating complex, sophisticated, and violent drug trafficking and transnational criminal organizations worldwide.

We target the most significant drug trafficking threats, including international cartels and the domestic drug distribution networks that poison our communities. Domestically, we focus on the most significant distribution networks, including violent gangs with direct connections to drug cartels that funnel illegal drugs across our borders. We work closely with our state and local law enforcement partners through DEA Task Forces and share real-time intelligence about particular drug threats that face our communities.

We saw several successes against Consolidated Priority Organization Targets (CPOTs) last year, including the recent guilty plea in federal court by Edgar Valdez Villareal (aka La Barbie) – a high-ranking member of the Sinaloa and Beltran-Leyva cartels to charges that he conspired to import and distribute cocaine into the United States and launder drug money from the United States into Mexico. Furthermore, Mexico's recent recapture and arrest of Joaquin "El Chapo" Guzman Loera, the leader of the violent Sinaloa Cartel, underscores our shared fight with Mexican officials against drug trafficking and violence.

Mexican Transnational Criminal Organizations (TCOs) remain the greatest criminal drug threat to the United States. These poly-drug organizations traffic heroin, fentanyl, methamphetamine, cocaine, and marijuana throughout the United States, using established transportation routes and distribution networks. They control drug trafficking across the Southwest Border (SWB) and are expanding their share of illicit drug markets, particularly heroin markets. Heroin seizures at the SWB more than doubled from 2010 to 2015, from 1,016 kilograms to 2,524 kilograms.<sup>3</sup>

Mexican TCOs exploit a user population struggling with the disease of addiction. In 2014, more than 4.3 million Americans age 12 or older reported using prescription pain relievers non-medically within the past month.<sup>4</sup> Furthermore, the non-medical abuse of prescription opioids has contributed to the increasing demand for heroin. While the vast majority of nonmedical opioid controlled prescription drug (CPD) users do not go on to use heroin, law enforcement agencies across the country have been specifically reporting an increase in heroin use by those who began using opioids non-medically.<sup>5</sup>

We are increasingly alarmed over the sale of fentanyl-laced heroin, as well as, fentanyl and its analogues sold alone as a substitute for heroin, all of which pose significant overdose risks to users. This drug, which can be absorbed through the skin or inhaled, makes it particularly dangerous for law enforcement, public safety, and health care personnel who encounter it. Due to the dangerous nature of illicit fentanyl and fentanyl

<sup>3</sup> U.S. Department of Justice, Drug Enforcement Administration, El Paso Intelligence Center, National Seizure System Reporting, *accessed on* January 20, 2016.

<sup>4</sup> Center for Behavioral Health Statistics and Quality. (2015). Behavioral health trends in the United States: Results from the 2014 National Survey on Drug Use and Health (HHS Publication No. SMA 15-4927, NSDUH Series H-50). Retrieved from <http://www.samhsa.gov/data/>

<sup>5</sup> U.S. Department of Justice, Drug Enforcement Administration, 2015 National Heroin Threat Assessment Summary, DEA Intelligence Report, April 2015, available at: [http://www.dea.gov/divisions/hq/2015/hq052215\\_National\\_Heroin\\_Threat\\_Assessment\\_Summary.pdf](http://www.dea.gov/divisions/hq/2015/hq052215_National_Heroin_Threat_Assessment_Summary.pdf).

analogues, DEA has taken actions to ensure public safety, including the issuance of a nationwide alert to U.S. law enforcement officials about the dangers of this drug. In addition, in July 2015, DEA used its emergency scheduling authority to place acetyl fentanyl in Schedule I of the Controlled Substances Act (CSA).

However, law enforcement action alone cannot address the increase in heroin and prescription drug abuse. Through DEA's new 360 Strategy, we are working with Diversion Control and Community Outreach professionals to battle the heroin and opioid pill crisis. Through our Diversion Control Program, we strive to control prescription drug abuse through compliance and regulatory actions and the deployment of Tactical Diversion Squads (TDS) aimed at using the administrative and criminal process to stop prescribers who operate outside of the law. Our Diversion professionals also engage drug manufacturers, wholesalers, practitioners, and pharmacists to increase awareness of the opioid epidemic and encourage responsible prescribing practices. Finally, our Community Outreach efforts involve collaborating with local organizations following enforcement operations to equip and empower communities to fight the epidemic and to address the demand side of the drug problem.

### **FY 2017 BUDGET REQUEST**

The FY 2017 President's Budget request will provide DEA with the resources needed to build upon our success and to continue to address the scourge of heroin and controlled prescription drug abuse. The budget requests \$2.103 billion for the DEA's Salaries and Expenses Account, an increase of 1 percent over FY 2016. In addition, the Budget requests \$382.7 million for the Diversion Control Fee Account (DCFA), including \$8.9 million to expand the Diversion Control Program's regulatory and enforcement efforts.

Enhanced funding will support the following DEA efforts:

### **HEROIN ENFORCEMENT**

DEA plays an important part in the U.S. government's drug control strategy that includes enforcement, treatment, and prevention. While there are complex issues affecting spikes in heroin use and overdoses, including prescription drug abuse, the same significant poly-drug trafficking organizations responsible for other illicit drug threats are also responsible for the vast majority of the heroin supply. Additionally, drug trafficking has a proven linkage to gangs and other violent criminal organizations. Funding includes \$12.5 million and 42 positions, including 32 special agents, to create new enforcement groups in DEA domestic field divisions. This is particularly important given the fact that over the last five years, DEA has experienced a net reduction in total onboard special agents.

### **DIVERSION CONTROL ENHANCEMENTS**

The 2015 National Drug Threat Assessment (NDTA) states the threat from CPD abuse is persistent and deaths involving CPDs outnumber those involving heroin and cocaine combined. The economic cost of nonmedical use of prescription opioids alone in the

United States totals more than \$53 billion annually.<sup>6</sup> TCOs, street gangs, and other criminal groups, seeing the enormous profit potential in CPD diversion, have become increasingly involved in transporting and distributing CPDs. This enhancement provides \$8.9 million and 55 positions, including 28 diversion investigators and 10 special agents, to conduct regulatory investigations and to identify, target, disrupt, and dismantle the individuals and organizations responsible for the distribution of pharmaceutical controlled substances in violation of the CSA.

## **CYBER SECURITY AND INSIDER THREAT ENHANCEMENTS**

Protecting Information Technology (IT) systems and data is essential. Ensuring availability of critical infrastructures requires comprehensive planning, investment in resources, and the ability to respond to cyber incidents with appropriate remediation actions in a timely manner.

Insider threats exist for all organizations. U.S. Government organizations have made significant progress in sharing information with federal, state, local, and tribal partners in the post-9/11 era, making the country safer and protecting lives. In today's technology driven environment, our adversaries' tactics, techniques, and capabilities are sophisticated and more insiders have access to increased amounts of information. This enhancement of \$7.6 million and 11 positions, including three special agents, will allow DEA to identify and evaluate suspicious, unauthorized, or anomalous activity, which may indicate intent to bypass or defeat security safeguards.

## **CONCLUSION**

DEA's enforcement efforts have contributed significantly to the overall strategy to reduce the availability of drugs in the United States. Through strong enforcement, education, prevention, and treatment, we can make significant progress in protecting our nation from drug abuse and its consequences.

Our focus gives us the ability to dedicate resources critical to disrupt and dismantle the most notorious drug traffickers that have the most significant impact on the U.S. drug market. With your support, we will continue our efforts to meet these challenges. I would be pleased to answer any questions you may have.

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<sup>6</sup>Hansen, Ryan N. PharmD; Oster, Gerry PhD; Edelsberg, John MD; Woody, George E. MD; Sullivan, Sean D. PhD. *Economic Costs of Nonmedical Use of Prescription Opioids*. The Clinical Journal of Pain March/April 2011 Vol. 27 – Issue 3: p. 194-202.

Mr. CULBERSON. Thank you very much, Administrator Rosenberg. If I could I wanted to ask you about the Inspector General who had documented a serious problem that you inherited, and I know you have dealt with. You inherited an agency that was troubled by reports of misconduct and unprofessional behavior. The DOJ Inspector General made recommendations for policy and management improvements and the Inspector General has reported that all of the issues have been resolved or closed, and we certainly appreciate that, under your leadership. Of course we expect the highest standard of professional conduct by all of our law enforcement agencies. And if you could, sir, please describe your actions to address a system or personnel problems that contributed to the types of misconduct that the OIG found?

Mr. ROSENBERG. Thank you for your question, Mr. Chairman. We have done a number of things, I believe, to address it, both the specific recommendations and more broadly some process issues that I found. Let me speak to the latter first, if you do not mind.

For instance our Office of Professional Responsibility (OPR) staffing was at about 50 percent. It was too small and too slow in order to move cases, to investigate cases, and ultimately to adjudicate cases internally. We needed to beef up that staffing and we have. We are now at about 90 percent.

As well we have streamlined I believe the process for adjudication, our deciding officials, the folks who receive the reports and the recommendations initially from OPR, we have increased their staffing levels as well. And we have taken smaller cases, I do not mean unimportant but I mean smaller ones, and moved that to our Board of Professional Conduct for its resolution, freeing up our deciding officials to handle the most serious misconduct cases in the agency.

The good news is that we have relatively few of those. The other good news is that we are moving them more quickly. So the number of cases we have pending for removal I believe are down to a very small number.

We had to look at the entire process to see where we had workflow issues and process issues. We also issued new standards of conduct, Mr. Chairman, making it clear that off duty conduct, or at least certain off duty conduct, was prohibited. One of the things the IG had pointed out was that agents who had solicited prostitution abroad were not dealt with swiftly and appropriately. We have made solicitation of prostitution off duty, on duty, whether it is in a jurisdiction that permits prostitution or not, a removable offense for the first instance.

So I think we have done a number of things, Mr. Chairman. We have more to do.

Mr. CULBERSON. We are going to have a series of votes coming up here in just a few minutes. So I would like if I could to move on to Mr. Honda, and then we will try to get through as many questions as we can before we recess.

Mr. ROSENBERG. Yes, sir.

#### OPIOID EPIDEMIC

Mr. HONDA. Thank you. Administrator Rosenberg, like many of my colleagues I am concerned about the surging opioid and heroin

abuse and overdoses. And one medication, Naloxone, has been shown to be effective in reversing an overdose if given promptly. In many jurisdictions first responders are now routinely carrying this medication. And I know that the Food and Drug Administration evaluates drugs from a safety and efficacy perspective. From the viewpoint of the DEA would you have any concerns with making this drug available over the counter or by simply asking a pharmacist?

Mr. ROSENBERG. That is a good question. I have thought a lot about this, Mr. Honda. I know—let me just add something first, before I answer your question. We have trained our own people on the administration of Naloxone. Sixty-four of our DEA special agents or EMTs have been trained to administer Naloxone. And as part of their training, and this may answer your question in part, they were also trained on CPR and on the use of defibrillators. Because as I understand it sometimes cardiac incidents can attend the administration of Naloxone.

So whether or not it is appropriate for over the counter without a prescription distribution, I do not know. But I do know that when we approached it as an agency we wanted to make sure that our men and women were trained not just on the administration of Naloxone but also for responding to cardiac events that may attend the administration of Naloxone. So I think it is worth looking at. I love the idea of getting Naloxone out there. I think that is terrific. I just want to make sure people are properly trained for any consequence that may flow from its use.

Mr. HONDA. Are there processes or steps that you would recommend in terms of moving into the arena of, for instance, having the first responders and other public safety officers being trained as the DEA and first responders are on a larger scale?

Mr. ROSENBERG. I think that would be wonderful. The more people we can have trained to administer it, the better. And we are going to do something within DEA, taking the first 64 folks that we have trained, and have them train additional people in our offices around the country. So getting that out there is a good thing. I just want to make sure we take prudent steps to ensure that folks who are administering it can administer it and attend to all of its consequences. So good thing, but we should be careful about how we go about putting it in the hands of people who would use it.

Mr. HONDA. One last question, in terms of side effects and its use, you said use in conjunction with cardiac arrest. But does Naloxone have any other uses other than just cardiac arrest? I mean, drug overdose seems to me a cessation of bodily function.

Mr. ROSENBERG. I am sorry. I was not clear, sir. What I mean is its primary use is to counter the opioid overdose. A side consequence, a side effect, is occasionally a cardiac incident. And so when we train people on how to administer Naloxone, we also want them to be trained to handle any cardiac event that may also occur. I am sorry. I did not explain that very well.

Mr. HONDA. Thank you, Mr. Chairman.

Mr. CULBERSON. Mr. Rogers.

The CHAIRMAN. Mr. Chairman, pardon my voice but I guess the allergies are winning. Let me talk to you about your 360 Strategy



for a moment. As I mentioned earlier, I am thrilled to see DEA tailoring its approach to the ever evolving prescription drug and heroin epidemic. When Oxycontin appeared in my district in the late nineties, we did not see much heroin in circulation. But the last decade that has changed dramatically. National heroin use has increased by 63 percent. Overdose has gone through the roof, I think due a lot to the emergence of Fentanyl with heroin. For the benefit of our group here today, why don't you give us an overview of how your 360 approach differs from your normal current operational strategy?

#### DEA 360 STRATEGY

Mr. ROSENBERG. Thank you, Mr. Chairman. The idea here is to attack a problem from all sides. My friend Director Comey at the FBI talked about the need to fill the time and space that you create in a community when you have an enforcement operation. And that is precisely what 360 is all about.

We have to continue our traditional law enforcement supply side work. That is sort of the heart and soul of who we are and what we are at the DEA. But in addition we have to recognize that we create time and space in a community when we put bad guys in jail for distributing drugs. And so that is the rest of 360. Treatment, education, you know, all go to the demand reduction leg of the stool. If we do not start knocking down the demand side, we cannot possibly win against the supply side. And the other part, of course, is diversion, making sure that folks who need opioids can get them but that they are prescribed in a thoughtful way and a limited way and that we have something to do with what remains. That they do not find their way into the stream of commerce.

Because here is the problem. Opioids are highly effective but they are also highly addictive. And if you get addicted to an opioid, and I am sure you see way too much of this in your home state, buying that pill on the street is very expensive. A 30 milligram pill of hydrocodone or oxycodone, for instance, would go for about \$30. The heroin or Fentanyl substitute is much, much cheaper. And so we see this migration, if you will, of folks hooked on pills to heroin. And the old stigma of having to inject heroin, that is a thing of the past. Now you can smoke it or snort it, you can ingest it in different ways. You do not need a needle. And it is simply widely available, more potent, and much cheaper than it ever has been before.

So the approach is keep the pills within the legitimate stream of commerce, attack the supply side, and try to reduce demand. That is the idea behind 360. And that is what I plan to talk about at the summit next week, because it is something that is really important to me and has been for a long time.

The CHAIRMAN. Well I really appreciate you coming to the summit. This is the fifth straight year that UNITE has put this on nationally. And we have got a tremendous line up of speakers, including you, which I deeply appreciate.

Mr. ROSENBERG. I think I am going to bring the average down, sir.

The CHAIRMAN. I do not think so. At 3:45 we are going to learn of another speaker that is going to be at our conference. I will wait

to announce that at 3:45. But I think you will be pleasantly surprised by that speaker.

360 was started in four cities, Pittsburgh, St. Louis, West Memphis, Arkansas, and Milwaukee. How did you come by those four?

Mr. ROSENBERG. We looked at cities generally that had an uptick in crime, cities, that were large cities but not enormous cities, and cities where we thought we could make an immediate difference. We are looking now at another round of cities and we are trying to approach this driven as much by statistics as we possibly can. Where do they need us? Where has the problem gotten worse? Where can we make a difference? I would not call it an exact science, sir. But it is an attempt to put limited resources where we can make a difference.

The CHAIRMAN. Do you see that expanding in time to rural locations?

Mr. ROSENBERG. I do if we have the resources. I would love to be in more cities. The feedback initially from the first four pilot cities has been good so I would love to expand it if I can.

#### DRUG TAKE-BACK DAYS

The CHAIRMAN. Congratulations on your Take-Back Programs. As you know and have said, expired medications or unused drugs often stay in the back of cabinets for months at a time or even years. More than 70 percent of people who first misuse prescription drugs get them from the medicine cabinet of a family or from friends or relatives, or simply take them without asking. Local law enforcement agencies simply do not have the capacity or the authority, really, to take back these unwanted meds. UNITE in Kentucky, though, did this beginning seven, eight years ago and it works. The DEA now has taken that nationwide. And I am pleased that in September you held your tenth Take-Back Day around the country. Do you plan to continue that program even more authoritatively?

Mr. ROSENBERG. Yes, sir. For this year we plan to do it twice. Our 11th National Take-Back will be April 30, 2016. And I anticipate that will be in 5,000 communities again around the country. Our second Take-Back in 2016 will likely be in October, certainly sometime in the fall. And I am hoping we build on the success.

One thing I should add, in addition to taking in about 749,000 pounds of unwanted drugs, and this is important, is the fact that we do it anonymously. We do not read labels. We do not take leads off of those things. If you want to bring in Bengay or aspirin or opioids, whatever you want to dump in, we will take it. But people need to know that they do so anonymously. Because we have to encourage people to empty out those cabinets that you spoke about.

The CHAIRMAN. In my area of Kentucky, UNITE started a Take-Back Program several years ago. Now we have got all of the police departments and sheriff's offices as depositories. And they have collected tons upon tons of Take-Back drugs. Then the sheriff and the police departments would utilize a Kentucky National Guard incinerator on wheels. They would burn the drugs periodically at different locations as they needed, until EPA comes along and says that violates the atmosphere. So they took that away. Can you help us with that?

Mr. ROSENBERG. Well I think the way we can help is that we have worked through those logistics with EPA. And so when we hold these Take-Back Days we can gather the stuff from various departments and have it incinerated according to regulation. With respect to the specific EPA regulations, though, sir, I do not know enough about it. I do know that we are able to help the local police departments that gather and collect by holding our own Take-Back Days.

The CHAIRMAN. Another example of your friendly EPA doing good for America. I yield.

Mr. CULBERSON. Mrs. Lowey.

Mrs. LOWEY. Thank you. And welcome, Administrator Rosenberg.

Mr. ROSENBERG. Thank you.

Mrs. LOWEY. I too, you can see that we are all on similar wavelengths, I am very concerned about the growing use of synthetic and so-called designer drugs, like bath salts, jewelry cleaner, herbal incense. They pose a serious public health concern and can cause vomiting, anxiety, agitation, irritability, seizures, hallucinations, heart problems, elevated blood pressure, loss of consciousness, significant organ damage, as well as overdose deaths. Now I understand that the problem is compounded as criminals constantly introduce new chemical variations. It seems to me it is a game of whack-a-mole.

Last fall the DEA and other local law enforcement partners, including the Rockland County Sheriff's Office, halted a criminal operation which operated in all five boroughs of New York City, allegedly involving the unlawful importation of at least 100 kilograms of illegal synthetic compounds, an amount sufficient to produce approximately 1,300 kilograms of dried product or approximately 260,000 retail packets. Each of these 260,000 packets of synthetic marijuana had the potential to send someone's family member to the hospital or worse.

In addition to the public health toll, criminal enterprises like this have been found to have links to violent conflicts and even terrorist activity. Can you share with us briefly the challenges in investigating these cases and whether DEA has enough authority under current law to prohibit these substances which are continuously changing?

#### SYNTHETICS

Mr. ROSENBERG. Congresswoman, thank you. I think your description of this as whack-a-mole is apt. But it is a very dangerous whack-a-mole game. It is not the one that you find at the county fair. This is much, much worse.

There are several classes of synthetics. Synthetic marijuana is a bit of a misnomer. It really is not marijuana. It is rather, I think, vile and nefarious that it is marketed that way so people will think it is not that bad. But it really is, as someone has described, Russian roulette. Although that does not quite work either because Russian roulette had one bullet in the chamber and this has several bullets in the chamber. The list of consequences that you described are all accurate but we are obviously also seeing kids dying from this stuff. And what makes it so vile is that the folks who are building this stuff, for lack of a better word, in their labs only have

to tweak a molecule or two from time to time to stay ahead of enforcement. We have the ability to emergency schedule some of these compounds. But at one point not so long ago we were seeing two and three new synthetic drugs a week. That number is now down to one or two a week, which still essentially precludes us from catching up. So it is a race we cannot win. It is whack-a-mole but it is also a race we cannot win.

Also sadly it is as easy as sitting down at your computer and ordering this poison off of the internet. And with respect to synthetic cannabinoids, what some people I think mistakenly call synthetic marijuana, you will find this stuff in shiny foil packages, you know, with colorful characters on the outside, clearly marketed to young adults. Not even young adults, young teens, young kids. You can buy them in roadside stores or convenience stores. They are just a few dollars. And one dose, one time is enough to kill you. Because you do not know what is in it. And so we are seeing the synthetic cannabinoids, which are I guess pharmacologically related to the THC in marijuana. We are seeing the synthetic cathinones, which you described, which are similar in effect to stimulants, methamphetamine. Flakka falls under that and I know there is an enormous problem in New York and around the country with Flakka. But Flakka is just one type. And this poison is marketed to kids.

So we have emergency scheduling authority. In 2012, I believe, Congress legislatively scheduled a number of synthetic compounds and that is a good way to attack the problem because you can go faster than I can go. We need help.

#### SOUTHWEST BORDER

Mrs. LOWEY. Thank you. Like many of the members of this committee, especially Chairman Rogers who has been really a leader for us all, I too am concerned with the rise in opiate addiction. And it seems to me that there are two fronts to this war, which is affecting every region of the country. The first is making sure that prescription drugs are not over-prescribed, which we have talked about, and abused domestically. The second is curbing the flow of heroin and other opioids from abroad. And in your statement you identify Mexican cartels as posing the greatest drug threat to the United States.

DEA has one of the largest overseas presences of any law enforcement agency with offices around the world, allowing you to work with foreign law enforcement on drug investigations and share intelligence. I wonder if you could share with us whether this collaboration between the DEA and law enforcement in Mexico is working? And what strategies are you employing with your Mexican counterparts to ensure that when a cartel is disrupted another cartel does not just step right in to meet market demand?

Mr. ROSENBERG. Two very good questions, I will try and answer them both. First I should mention probably 98 percent of our heroin comes out of Mexico. So an enormous problem. But as you noted, we have a very large overseas presence and we have a large overseas presence in Mexico. We work well and closely with our Mexican counterparts. But when you are working in another country there are obviously limitations. Not just for DEA, but for ATF

or FBI or anyone else for that matter. And so we are guests of our Mexican counterparts in Mexico.

We do training. We work closely with vetted units there. We have made a number of important inroads. But I come back to a problem that I mentioned in a discussion with Chairman Rogers. As long as the demand remains so remarkably high in this country for that poison, they are going to find a way. It is so lucrative.

So we have successes and we continue to have successes. If the DEA is doing its job right, and I hope we are, we are going after the biggest, most violent international cartels and the most violent and dangerous street gangs in the country. But as long as demand remains where it is, Congresswoman, they are going to find a way.

So are we working well with our Mexican counterparts? Yes. Is there more to do? Absolutely. But we need help on this side of the border, too.

Mrs. LOWEY. Thank you. And thank you, Mr. Chairman.

Mr. ROSENBERG. Thank you, Congresswoman.

Mr. CULBERSON. Thank you very much. Mr. Aderholt.

Mr. ADERHOLT. Thank you, Chairman, and Administrator Rosenberg, thanks for being here. I know that your colleague Director Comey has been very outspoken about the issue of the smart phone encryption and the impact it has had on law enforcement overall. And I have directed several questions submitted to him about the situation. But I would like to hear your perspective and could you share with the Committee on this issue, and how it is impacting DEA and its work?

Mr. ROSENBERG. Certainly, sir. My view is not different than his, nor is it different from the Attorney General's. It strikes me as odd and dangerous that with a lawful court order there are places we literally cannot go. We also favor strong encryption. The entire United States government and all of its citizens benefit from strong encryption. But it is, as Director Comey has said, as if there was a closet or a room for which there is no entry. And that is dangerous. We are seeing it in our line of work too, of course. And so I do not think I can say it better than Director Comey did. It is a problem at the DEA. It is a problem throughout law enforcement and it is a problem throughout our intelligence community. It is something I worry about and it is something I see routinely.

#### MARIJUANA

Mr. ADERHOLT. Your predecessor previously addressed the situation with legalized marijuana when they were here. Can you give the subcommittee an update on how the actions of those states has affected DEA and other law enforcement's ability to stem the tide of this drug? And does the DEA have the resources or has it requested a budget request that is large enough to adequately help with the States surrounding Colorado and Washington?

Mr. ROSENBERG. Well with respect to the budget request, I think the President's budget is good for DEA and I would be thrilled to see it enacted as written for us. Do we have enough resources? Well, we have lost men and women over the last five years. I think I mentioned in my opening remarks, we are down about 860 people in the last five years. About 350 of them are special agents. So we do not have the resources we once did, and that is a problem. Not

an insurmountable one if we do the following thing. And this is what I have told my Special Agents in Charge around the country to do. Go out in your jurisdiction and work the biggest, most important cases you have, whatever it may be. And this will respond to your question, sir.

In many cases the biggest and most important cases are heroin, opioids, meth, synthetics, as Congresswoman Lowey mentioned. But I have also told my SACs, my Special Agents in Charge, if your biggest and most important case is a marijuana case, go make it. Marijuana is illegal under Federal law. I am a law enforcement official and I have no difficulty in supporting the men and women of DEA if those are the cases they are doing. None, whatsoever.

But the simple fact and the simple math of it is in most of our jurisdictions, and you can see this in our National Drug Threat Assessment, it is ranked lower of course than heroin, opioids, synthetics, cocaine, and meth. Are we still making marijuana cases around the country? Absolutely. We are abiding by the memo that former Deputy Attorney General Cole issued in I think August of 2014, it might have been 2013, but where we have a big, important case, go make it. If it happens to be marijuana, so be it.

Mr. ADERHOLT. All right. Thank you, Mr. Chairman.

Mr. CULBERSON. Thank you. Thank you very much. We have a series of votes coming up. Mr. Serrano has, do you want to ask a couple of questions? Sure. Mr. Serrano?

Mr. SERRANO. Thank you for being here. I want to make sure that we are speaking about the same thing, what Mr. Honda was speaking about, which one was that? Is that the same item that is being used by the New York City Police Department?

Mr. ROSENBERG. I do not know specifically what they are using, but there is a second name that is often, Naloxone or Narcan. Yes, and I think many—

Mr. SERRANO. Because my question would be if that, such a large police department has seen fit to use it, why do we still have concerns about its usage?

Mr. ROSENBERG. Oh, I do not have concerns about its usage. I think it is a wonderful thing. And I love the fact that my DEA special agents are being trained to use it. My point only was that they are also being trained for—

Mr. SERRANO. Side effects?

Mr. ROSENBERG [continuing]. For possible side effects that attend the administration of it. So they are being trained on the administration of Naloxone or Narcan, as well as CPR and the use of defibrillators.

Mr. SERRANO. All right. And my second and last question is some years ago, about 15 years ago, the Cuban government was willing to have DEA, I think it went as far as stationed in Cuba, on Cuban soil, during the heat, you know, the top of the Cold War between us, in order to deal with the fact that some boats were landing on Cuban soil and then from there using it to transport, or make exchanges. And politics got in the way and that never happened. Has that been mentioned again, without giving me any state secrets? Or do you think there is an opening now for that to happen perhaps?

Mr. ROSENBERG. They do not tell me any state secrets, Mr. Serrano. But it is certainly something that we ought to look at given its proximity to our shores. I would say, and I mean this colloquially, it is a bit of an intelligence gap. So we are going to keep our eye on Cuba. It is not presently a large transit country or source country.

Mr. SERRANO. Right.

Mr. ROSENBERG. But as you know, things can change. And so it is something we are certainly cognizant of.

Mr. SERRANO. Yes, we know that they have been pretty strict about, you know, and come down hard on drug situations. But it just struck me that it was so incredible, Mr. Chairman, that they were willing to have DEA agents stationed in Cuba in order to deal with this, which was a problem to them and a problem to us. So if there is an opening under this new thing that is happening between the two countries, I think we should look at it again.

Mr. ROSENBERG. We will look at it. I promise you that, sir.

Mr. SERRANO. Thank you. Thank you so much, Mr. Chairman.

Mr. CULBERSON. Thank you. Mrs. Roby.

#### OPIOID EPIDEMIC

Mrs. ROBY. Thank you, Mr. Chairman, and thank you, Administrator Rosenberg. And I just want to tell you personally how much I appreciate the time that you spent with me last week. You really educated me in a way that even after having served on this Committee I do not know that I fully could appreciate, despite the chairman of the full committee's commitment to a lot of these issues and the fact that you are diligent, Mr. Chairman, in always ensuring that these are issues that are addressed, particularly because of your State and your district. I, however, did not quite understand how it affected my own district or my own State.

And so I watched this on YouTube, but you directed me to this video *Chasing the Dragon*. And I hope everybody on this committee, I may just be behind the ball, but watching that video really gave me a perspective, particularly as a mom with young kids, about how quickly someone's life can deteriorate from opioid use into heroin and then overdose. And hearing the one mother talk about the loss of her child but also seeing a mother herself having lost control of her own life and losing her children in a different way was pretty remarkable for me. And so I just want to tell you, you know, how much I appreciate your commitment to these issues. And shedding light on it in a way that we can all relate to.

Because as I said to you in my office, unless you have had a family member or someone close to you go through an addiction, particularly in this case opioid or heroin addiction, and either come out the other side in a positive way or lose their lives tragically, I do not think, I mean I certainly can say I cannot speak with authority on this issue in any way, shape, or form. And so I think it is important for those of us who have not experienced that to be able to have a glimpse into the lives of families who have been tragically affected by this in order to put faces behind the mission and the cause that we all on this committee and in the Congress are fighting to eradicate. And so just thank you for that. It really meant a lot to me to be exposed to this in a different way. You

know, we spend a lot of time in these committees you know reading facts from a sheet of paper or talking about things at a 30,000-foot level. But you really helped me personally drill down on this issue.

Mr. ROSENBERG. If I may, Congresswoman, first of all it was a pleasure to meet you and spend time with you. I truly enjoyed that. Second, I do not believe you are behind the eight ball or behind the times or whatever metaphor we want to use. Though I spent my career in Federal law enforcement as an Assistant U.S. Attorney and as U.S. Attorney in two different districts, and with two stints at the FBI, I had no idea until ten months ago how bad this problem was. None. So please do not feel—

Mrs. ROBY. Yes. Well, that does make me feel a little bit better. But I did ask you for some information and one of the things that struck me, there is one county in Alabama where the number of deaths related to heroin overdose grew from 58 in 2013 to 136 in 2014. Which as you said, we use these words a lot, and we use them sometimes without the appropriate meaning. But that truly is stunning.

Mr. ROSENBERG. Stunning.

Mrs. ROBY. And so I appreciate, I mean, all of the things that my colleagues have already touched on were things that I wanted to talk to you about. I do want you to help us understand as members of Congress who work on the federal level how can we help you with the Take-Back Program? Because it is such a, this is, we talk about rocket science in this room, that is not rocket science. That is how do we get these drugs out of people's medical cabinets so children or anyone does not have access to it? I mean, I do not know if I am one of the 5,000 cities exist in my district. But I sure want to come up with a way to get cities in my district on the list to make it as easy as possible for people, including myself, to empty out the medicine cabinets of old, unused pills. I think there is a way that all of us can use our mouthpiece on social media and other ways to be a part of that. I want you to help us figure out a way that we can play a role in that.

Mr. ROSENBERG. We would be delighted to work with your office or anybody's office here. This is a public good. It is one of the reasons I wanted to speak and was so privileged to be invited to the gathering that Chairman Rogers has in Atlanta. The more people who know about this stuff, the more people can help us publicize it. It is, like I said, an unmitigated good. So we would be happy to touch base with your office.

Can I also just give a shout out to the FBI? Because we did not produce *Chasing the Dragon* alone. We did it with them. It is a very powerful movie. And we will give copies to anybody who wants it. If you want to show it in your district, if you want your district directors to have it. Watch it first. As you know, Congresswoman, there is some rough language in there. Probably nothing that our kids have not heard. But it is an important message.

Mrs. ROBY. It is great and it is rough, but rough does not even begin to describe the reality—

Mr. ROSENBERG. That is right.

Mrs. ROBY [continuing]. That these people go through. So again, thank you and I know we are under a time constraint so I yield back.



Mr. ROSENBERG. Thank you.

Mrs. ROBY. Thank you.

Mr. CULBERSON. Thank you, Mrs. Roby. We are going to come back and go to Mr. Palazzo. But we have a series of votes, Director, if we could recess briefly and we will come back after this set of votes.

Mr. ROSENBERG. Thank you, sir.

[Recess.]

Mr. CULBERSON. The hearing is back in session and I would recognize Mr. Palazzo.

Mr. PALAZZO. Thank you, Mr. Chairman.

#### HIDTA

Mr. Rosenberg, thank you for taking the time to meet with us today. I commend the DEA for its efforts in the war on drugs. Drugs rip apart families and devastate communities. It doesn't matter if you are in one of our country's largest cities or some backwoods town throughout rural America, drugs find a way to establish a foothold that seems to never fully go away.

I am blessed to live on the Mississippi Gulf Coast. You know, we have got beautiful beaches, great seafood, great fishing, awesome people, but we also have the I-10 corridor that stretches from the southwest border all the way to the eastern seashore, which is great for commerce, it is great for travel, tourism, but also it is a great way to traffic drugs in between locations. And so it does find its way into our community.

And so with that, I would like you to discuss possibly the Gulf Coast High-Intensity Drug Trafficking Area and the DEA's partnership with state and local entities to block the flow of drugs flowing through the Gulf Coast region.

Mr. ROSENBERG. Certainly, Congressman. And what you are seeing in Mississippi, sadly, is being replicated everywhere in this country. It is an epidemic.

Let me give you a little context, if I may. We have about 4,600 men and women who are Special Agents of the DEA, we have another 2,600 some-odd Task Force Officers. So they are literally, not just figuratively, but literally a force-multiplier for us. Something like 35 percent of our law enforcement cadre are TFOs, state and local officers assigned to work with us on task forces around the country, including throughout the Gulf Coast. So it is enormously important.

If I may add one other point about that, sir? The suspension in the Equitable Sharing Program has caused some TFOs, the sky isn't falling yet, but some TFOs to drift away from our task forces, and it is something I worry about and I hope we can get the Equitable Sharing Program turned back on.

But the task force environment, whether it is HIDTA or OCDETF, is enormously important to our work and to our mission.

Mr. PALAZZO. Well, thank you. And I hope we the Equitable Sharing Program back on as well, because I have heard from local law enforcement officers, as well as district attorneys, how important that is.

Recently, the Commandant of the Coast Guard testified before Congress that we have actionable intelligence on 80 to 85 percent

of known drug trafficking, yet because of resource restrictions we are only able to intercept and prosecute 20 percent of those occurrences. One of the biggest issues facing the Coast Guard is the lack of available ships. You know, I am a big proponent of catching the bad guys and the drugs before they actually make it into our backyard.

So could you comment a little bit on the interagency partnerships that you have at the DEA, specifically with the Coast Guard?

Mr. ROSENBERG. The Coast Guard is an important part of what we do, particularly with respect to their intelligence and interdiction work; I have tremendous respect for them. And I will point out, my dear, departed father was a Coastie, so I have long admired the Coast Guard.

Through our El Paso Intelligence Center we have a number of intelligence community partners, state and local partners and DOD partners, including the Coast Guard, that contribute to our mission and to our intelligence sharing. So I am enormously grateful to the Coast Guard, not just for the experience they gave my dad as a young man, but what they do for our mission.

Mr. PALAZZO. Well, so basically you would agree with me, if the Coast Guard had more ships, we could intercept more drugs before they came to the United States?

Mr. ROSENBERG. If we all had more stuff, we probably could do more with it. It is a challenge throughout government, as you well know. We try and make do with what we have.

Mr. PALAZZO. Well, it is a serious issue. And, again, drugs do rip apart families and communities, which leads me into my last question and I will make it fast, is what we are seeing in rural areas is the spread of methamphetamines and the production of methamphetamines. In fact, 17 percent of all drug convictions in the state are related to meth.

In 2010, we tried to slow this growth down by looking at the precursors of meth manufacturing and we basically required a prescription for, you know, pseudoephedrine and ephedrine, and it has worked, it slowed down. People still go to the bordering states, but we are capturing people, you know, that are going in and purchasing these precursors more. I think it is something that is going to devastate our entire nation.

Can you tell me, what is the DEA doing to basically combat meth production and use in rural communities around the United States?

#### ANTI-METH

Mr. ROSENBERG. We are trying to approach it, sir, the way we approach these other aspects of the drug epidemic. A lot of the meth that we see in the United States actually comes out of Mexico.

Several years ago we had a number of large clandestine labs in the U.S. producing meth. Most of the meth labs in the United States now are what we call one-pot labs, meaning very small with very small yields. We are seeing the precursor chemicals going into Mexico, into much larger labs, and then coming across our border.

So, again, it is probably threefold. It is attacking the supply. It certainly has, you know, connections to the diversion problem. And

then it is that education, prevention, treatment, outreach component, the demand reduction.

So we are throwing everything at it. It is a tough battle.

Mr. PALAZZO. Well, I appreciate your testimony. And if I can ask one last question, since we are kind of sparse with members right now.

What is the one thing that you wish you had that could make your job easier, and that you could protect families and protect communities and protect our most valuable resource, our children, against the scourge of drugs today?

Mr. ROSENBERG. I wish I had a day where I could talk to everybody at once and they would listen to me. I know that sounds like a soft answer to a legitimate question. I struggle with how do we get this message out, because I really don't think supply-side law enforcement interdiction alone will win the day or do the trick.

I feel like what I have learned in my ten months at the DEA is both astonishing and frightening, and that if I could somehow convince people that we really, really do have an epidemic, and tell them how it starts and where it goes. And I know it sounds like a soft answer, but that is what I would love to do. I would love to have people listen to me just for a day. It seems unlikely.

Mr. PALAZZO. Well, I hope more people listen and I thank you for your testimony.

Mr. Chairman, thank you for your time.

Mr. ROSENBERG. Thank you, Congressman.

Mr. CULBERSON. Thank you. Thank you, Mr. Palazzo.

In addition to DEA's appropriation, the committee provides over \$500 million for drug task forces, OCDETF, which fund both investigative and prosecution costs to combat major drug organizations. Could you describe how OCDETF, how that process works in comparison with DEA's own task forces?

And should the DEA, FBI and other investigative agencies and U.S. Attorneys get their money in their own accounts or, in your opinion, does that OCDETF process work well?

Mr. ROSENBERG. Strangely, Mr. Chairman, we just call that OCDETF. I don't know quite how that word comes from those letters.

Mr. CULBERSON. It is tough.

Mr. ROSENBERG. But the OCDETF task forces are an important part of who we are and what we do.

I do like the task force concept, whether it is OCDETF or HIDTA. I believe there are 12 OCDETF strike forces around the country, they are funded through the Department, I think, I believe, and I think nine of the twelve are DEA-led.

And when you look at the number of cases that we open—so OCDETF, generally speaking, are our largest, most important cases. It would be transnational, organized criminal gangs and the like, violent international cartels and the unholy alliances that they have with street gangs in the U.S. So when you say OCDETF, it is almost a synonym for our most important stuff.

And of the OCDETF cases that we opened in the last fiscal year government-wide, something like 80 percent—I don't know the exact number, but I can get it for you—are DEA-led cases or DEA

cases. So it is a big part of who we are and what we do. I like the concept and it works well for us.

And as I mentioned, nine of the twelve OCDETF strike forces around the country are led by DEA agents. So it is a good vehicle for us and these are important cases.

I still don't know why we say OCDETF, but—

Mr. CULBERSON. It is a tough one.

Mr. ROSENBERG. It is a tough one.

Mr. CULBERSON. Should the DEA, FBI and other agencies and U.S. Attorneys get this money in their own accounts, or does the way it is currently set up work well?

Mr. ROSENBERG. I think the way it is currently set up works well. I would have to give that a little more thought, because I don't really know and I have not focused on that question, sir. So if you don't mind—

Mr. CULBERSON. Not at all.

Mr. ROSENBERG [continuing]. I would be happy to get back to you on that with some further thoughts.

#### CYBER

Mr. CULBERSON. Your request also calls for \$7½ million in additional staff to enhance internal cyber security and combat potential insider threats. Could you describe what these are and what the DEA is currently doing to address these challenges?

Mr. ROSENBERG. Yes, sir. And I am pleased that the President's budget provides for that.

Cyber security generally is so we can protect our stuff from the outside, from intrusions, and we have all seen far too many of those, sadly and unfortunately. Targeted not just at government, but at private individuals and private sector companies. So we want to make sure that our systems are secure as can be.

The insider threat piece is a cousin to that. I want to make sure, because I was an Assistant U.S. Attorney in the Eastern District of Virginia where Aldrich Ames, the CIA spy, was prosecuted and where Robert Hanssen, the FBI spy, was prosecuted, that our stuff is secure from an insider threat.

I have wonderful men and women, but if one day one of them decides not to be so wonderful, if one day one of them comes in and wants to, you know, copy all of our confidential source files to a thumb drive at 2:00 in the morning, I need to see that and I need to know about that.

The most important resource we have is our people and protecting them is paramount. But second to that, of course, it is our information. Our confidential source files, our investigative files. I can't lose that. And so I need to build a capacity internally not to watch people through their bedroom windows, not to look in their bank accounts, but to know that if somebody is engaging in strange behavior, and by that I mean strange electronic behavior, I got to make sure that my files are secure, so that my people are secure, and the President's budget provides us money I think to do that.

Mr. CULBERSON. Thank you.

Mr. Honda.

## MARIJUANA

Mr. HONDA. Thank you, Mr. Chairman.

Administrator Rosenberg, as you know, many states are legalizing medical marijuana and a few have legalized recreational marijuana. And it seems like our country's view on this has shifted significantly in recent years, and at the same time we are seeing a surge in costs both in terms of lives and funding due to the spike in opioid and heroin addiction, and I think it might be time to shift where we focus our enforcement resources.

Do you think that it is time to have a conversation about rescheduling marijuana under the Controlled Substances Act? And from the perspective of DEA, would there ever be a circumstance where you would support rescheduling?

Mr. ROSENBERG. So under the Controlled Substances Act, Mr. Honda, something is put into Schedule I, as marijuana currently is, if there is a potential for abuse and if there is no recognized safe and effective medical use.

And so if it turned out one day that there was a recognized safe and effective medical use, and I don't want to quibble over words, by recognized I rely on the FDA for its science, then it could certainly be moved out of Schedule I. But as long as those are the criteria for placement in Schedule I and as long as the FDA continues to tell me with their very good doctors and scientists that there is no recognized safe and effective medical use, I think it is properly classified.

Now, I also take your point that the conversation has shifted, but I am a law enforcement officer.

Mr. HONDA. I understand that.

Mr. ROSENBERG. It is illegal under Federal law. I have told my Special Agents in Charge to make the most important cases in their jurisdictions, typically that is not marijuana, typically that is heroin or opioids or synthetics or meth and the like. But I have also told them, as I mentioned earlier, where there is a significant marijuana case where it is a violent cartel, where they are distributing to minors, where it meets the criteria of the Cole memo, go do it. It remains illegal under Federal law and my job is to enforce the law.

I am sorry for the long-winded answer.

Mr. HONDA. No, no, it is fine.

I think, being in the position that you are, you have limited wiggle room in terms of upholding the law and following it. And asking for your opinion and getting a response like it is our scientific evidence that shows that there is some legitimate uses in medicine or in other arenas, that the conversation probably should take place.

Mr. ROSENBERG. And I think that is fair, but I have to rely not on a vote or on public opinion, but on the science of the FDA, that is sort of my guiding principle here.

But I will say this. I think this is really important and sometimes gets lost in the debate, sir. The DEA has 469 individuals registered with us, with our permission, to do research on Schedule I controlled substances. Of those 469, and I hope I am getting my numbers right, 254 are researching marijuana and its constituent

parts. We have never, never turned down a legitimate request for research on marijuana.

If I break it down further for you and make you feel a little bit better, 85 of those researchers are researching cannabidiol (CBD), which may turn out to prove effective for treatment of certain illnesses, including possibly childhood epilepsy, and another 17 of the researchers are actually working on smoked marijuana using human subjects.

I completely and fully support research, we have got to do that. And in fact we are making provisions to make applying for permits to do research easier. We have recently issued modifications, or I should say, amendments, so that researchers who want to modify their work have an easier time in doing that. If we are going to be grounded in science, we have to support the work of scientists.

And if it turns out that there is something in marijuana or marijuana itself that is effective against childhood epilepsy, I promise you I will be at the front of the parade, leading the band.

Mr. HONDA. No, I understand your response. And my brother was a Federal parole officer and, you know, he had certain things he had to follow too.

Mr. ROSENBERG. Yes, sir.

Mr. HONDA. So I completely understand your response.

Mr. ROSENBERG. Yes, sir.

Mr. HONDA. Another cut on this. In the final fiscal year 2016 omnibus carried the medical marijuana language which prohibits DEA from preventing States from implementing their own laws that authorize the use, distribution, possession, and cultivation of medical marijuana. We have heard of incidents where DEA and the Department of Justice are still pursuing these cases.

Without commenting on specific cases, is it the policy of DEA to investigate any dispensaries that operate under the State law? And is DEA disregarding the law that Congress passed?

Mr. ROSENBERG. I am familiar with the provision, I think it was section 542 of the omnibus bill, and I know it became an issue in a case out of the Northern District of California decided by Judge Breyer, *United States v. Marin Alliance*. So I am certainly familiar with it.

I am not a constitutional scholar, but nothing in section 542 mentions the Controlled Substances Act, and so I don't think anything in section 542 in any way undermines our Federal law enforcement or civil enforcement authority under section 542. Smarter people than me, and there are many of them at the Department of Justice, are noodling through this right now. I don't know Judge Breyer. I have great respect for the Federal District Judges of this country, I practiced in front of many, but I don't believe that his reading of section 542 is right and I think the Department has taken an opposite view.

I do know as sort of a principle of statutory construction that if an Act of Congress is not specifically—I think this is right—refuted, repealed by another act, and that there is some way to read them so that they live together peacefully, then they can. And I think that is what we have here, that we can continue to enforce Federal law under the Controlled Substances Act. What we cannot

do pursuant to that amendment, I believe, is prohibit the States from implementing their own regulations.

So, again, there are people far smarter than me at the Department who can give you a better answer, but I don't see it as precluding our Federal law enforcement work.

Mr. HONDA. I think I followed your noodling.

Mr. ROSENBERG. Yeah, it was some significant noodling. So thank you for bearing with me.

Mr. HONDA. Thank you.

Thank you, Mr. Chairman.

Mr. CULBERSON. Any other questions we will just submit for the record, to have you be able to answer them in more detail.

Mr. ROSENBERG. I would be delighted.

Mr. CULBERSON. Any further questions?

Mr. HONDA. Well, a real quick one, if I may.

Mr. CULBERSON. Sure.

Mr. HONDA. This impact that the war on drugs has had on levels of incarceration in our nation's prisons, both at the State and Federal level, this has been a particularly harsh impact on minority communities, many of which have seen large segments of their population jailed for drug offenses. Criminal justice reform is currently being debated both in Congress, as well as the legislatures across this nation. As we have those conversations, I think input from law enforcement is important to hear.

So the question would be, is there a way to wage a smarter war on drugs? And I think you spoke a little bit about that in terms of priorities and how you would approach it, but is there a smarter way of approaching the war on drugs that still puts violent criminals in jail while doing a better job of rehabbing those who are low-level, non-violent offenders?

Mr. ROSENBERG. Well, I think our 360 strategy gets at some of that, Mr. Honda, by also emphasizing education, you know, prevention and demand reduction.

But also if we are doing our jobs right, and I have urged our Special Agents in Charge to follow this edict, we have to do the biggest, most important cases in the country, we shouldn't be doing low-level offenders. We are not busting kids in their UCLA dorm rooms for smoking dope. We are going after big, violent, international cartels and street gangs, that unholy alliance I spoke of earlier. As long as we focus our work there, I think we are smart on crime.

Mr. CULBERSON. Administrator Rosenberg, we deeply appreciate your service to the country. I will have a number of other questions we will submit for the record.

And, again, we will do our very best in this tight budget environment to give you the support that you need so you can continue your important mission. We thank you so much for looking after the welfare of our kids and the country.

Mr. ROSENBERG. Mr. Chairman, Mr. Ranking Member, it is a privilege. Thank you for having me here today.

Mr. CULBERSON. Thank you very much, sir.

And the hearing is adjourned.

**The Honorable John Culberson**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**DEA FY2017 Budget Request**

1. Please provide an estimate of how much of the DEA FY16 budget and FY17 request is planned to be directed at drug trafficking used to support or finance terrorist enterprises.

**Answer**

DEA's budget integrates its own priorities with DOJ's Strategic Goals and Objectives to ensure that each performance objective is linked to the resources required for critical strategic actions. DEA's budget requests resources in support of DOJ Strategic Goal 1: Prevent Terrorism and Promote National Security Consistent with the Rule of Law; and, Strategic Goal 2: Prevent Crime, Protect the Rights of the American People, and Enforce Federal Law. DEA's FY 2016 enacted budget and FY 2017 President's Budget request include approximately \$80 million and \$82 million, respectively, in support of DOJ's Strategic Goal 1.

DEA's drug trafficking and money laundering enforcement initiatives support and augment U.S. efforts against terrorism by denying drug trafficking and/or money laundering routes to foreign terrorist organizations, and by preventing the barter of drugs for munitions destined to support terrorism.

While DEA does not specifically target terrorists, we do address the connection that exists between terrorism and drug trafficking by engaging in proactive enforcement and intelligence gathering operations with our host nation law enforcement counterparts. DEA targets PTOs and recognizes that strong collaborative partnerships with international counterparts are essential to a comprehensive drug control strategy and are critical to significantly reducing transnational crime, including narco-terrorism. Through denying drug trafficking organizations (DTOs) revenue from drug proceeds, DEA plays a critical role in protecting our national security by starving these criminal organizations' financial base and reducing their ability to fund terrorist acts. From October 1, 2014 through September 30, 2015, DEA was responsible for denying \$3.5 billion in drug trafficking revenue, exceeding the FY 2015 target of \$2.8 billion.

2. Please describe the scale and impact (in terms of assisted seizures, completed investigations, arrests and organizational disruption/dismantling) in Afghanistan for fiscal years 2013-2015 and estimated for fiscal years 2016-17.

**Answer**

The drawdown of the U.S. military, reduction in interagency funding and fewer DEA personnel will have an impact on the range of DEA operations and activities in Afghanistan. In addition, due to the nature and complexity of narcotics investigations, political instability, and the insurgency, it is challenging for DEA to accurately project future performance. While it will be difficult to sustain past years' levels of operations and activities, DEA will strive to deploy its resources to focus on high priority investigations.



The following table "DEA Kabul Country Office Metrics" illustrates the scale and impact of past DEA counter narcotics activities and operations. Operational and investigative data are based on joint DEA and SIU bilateral investigations.

<b>DEA Kabul Country Office Performance Metrics</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>Total(s)</b>
<b># of DEA Operations</b>	54	39	25	<b>118</b>
<b>Heroin Seized (kgs)</b>	757	377	185	<b>1,319</b>
<b>Opium Seized (kgs)</b>	2,609	3,130	7,682	<b>13,421</b>
<b>Hashish Seized (kgs)</b>	1,053	7,087	1,041	<b>9,181</b>
<b>Morphine Base (liters)</b>	53,409	10,220	1,690	<b>65,319</b>
<b>Morphine Base (kgs)</b>	6,656	5,640	380	<b>12,676</b>
<b>Chemicals Seized (liters)</b>	54,292	17,345	234,039	<b>305,676</b>
<b>Chemicals Seized (kgs)</b>	11,397	15,602	1,450	<b>28,449</b>
<b>Labs Destroyed</b>	19	15	5	<b>39</b>
<b>Assisted Arrests</b>	100	61	57	<b>218</b>
<b>Revenue Denied</b>	\$56 million	\$31 million	\$52 million	<b>\$139 million</b>
<b>Afghan Students trained</b>	9,434	7,867	5,540	<b>22,841</b>
<b>CN Training Courses</b>	547	482	359	<b>1,388</b>
<b>Investigations</b>	66	53	29	<b>148</b>

3. Afghanistan continues to be the top opium producer, but the U.S. military drawdown has led DEA to reduce its presence, as you note in your request that DEA depends on (declining) State and Defense program funding to cover most costs of assisting the Afghan government, and has ended the DEA FAST team program. What is the status of Afghan opium production and trafficking growth, and how will DEA be able to leverage its mission there, despite the reduced U.S. presence?

#### **Answer**

According to United Nations Office on Drugs and Crime (UNODC), opium cultivation in Afghanistan decreased 19% from 2014 to 2015. In addition, UNODC reports the average opium yield per hectare in Afghanistan dropped to 18.3 kilograms per year during 2015, compared to 27.8 kilograms during 2014. Further the number of opium-free provinces in Afghanistan dropped to 14 during 2015, compared to 15 in 2014. Opium cultivation remains concentrated in the Southern, Eastern and Western regions of Afghanistan, specifically in Helmand, Kandahar, Farah, Badghis, Uruzgan and Nangarhar provinces where some of the most pressing security challenges remain.

Moving forward, the DEA Kabul Country Office will continue to leverage the working relationships that have been developed during the more than 10 years of capacity-building efforts with Afghanistan's counter narcotics units. Additionally, the unique skills and investigative capabilities of DEA personnel will help DEA achieve its mission as investigations are initiated and intelligence is gathered in environments that pose significant operational risks and challenges. Despite these challenges, DEA continues to yield significant results. Overall, DEA will pursue two principal strategic objectives in Afghanistan:

- Enforcement - Target major drug traffickers and affiliated organizations that fund terrorist and insurgent activities and threaten U.S. national security interests, while utilizing evidence obtained from the Afghan Judicial Wire Intercept Program (JWIP).
- Training - Assist in the development of drug enforcement institutions in Afghanistan to increase both the capacity and sustainability of Afghan-led counternarcotics programs.

In support of these objectives, the DEA Kabul Country Office will transition its operational focus to training, advising, and assisting the Sensitive Investigative Unit (SIU) and the National Interdiction Unit (NIU) of the Counter Narcotics Police of Afghanistan (CNP-A). The DEA Kabul Country Office in conjunction with their host nation law enforcement counterparts will conduct bilateral investigations that target significant drug trafficking organizations and affiliated organizations that fund terrorist and insurgent activities, collect drug-related intelligence, support domestic DEA investigations, and conduct international training courses. Additionally, the SIU, in partnership with DEA, will operate the JWIP, a critical platform to support evidence-based and intelligence driven law enforcement operations, both within and outside Afghanistan.

4. Mexico supplies the U.S. with most of its heroin, meth, and marijuana. Mexican heroin supply has expanded, overtaking Colombian sourced drugs. Will the recapture of "El Chapo" Guzman end the Sinaloa Cartel, and lead to more productive US-Mexican cooperation in tackling the cartels – or simply force a reorganization of the cartel's workforce, as seems to have happened when previous DTO dismantling occurred, for example, with the Arrellano-Felix organization?

### **Answer**

The ability to disrupt and dismantle entire organizations – from leaders to transporters to money launderers – is essential in affecting the availability of drugs in the United States. For this reason, DEA focuses on targeting all levels of organizations and will continue to work with the Government of Mexico in these efforts.

The Sinaloa Cartel continues to operate as a major Mexican Drug Trafficking Organization (DTO), trafficking multi-ton quantities of drugs into the United States, despite the recapture of Joaquin "El Chapo" Guzman-Loera. Although Guzman's recapture will not result in the end the Sinaloa Cartel, it has caused a shift in the DTOs' leadership structure. Damaso Lopez-Nunez, head of the Lopez-Nunez DTO has assumed a leadership role. Under Lopez-Nunez's leadership, the Sinaloa Cartel consists of four DTOs: the Zambada-Garcia DTO, the Guzman-Loera DTO, the Lopez-Nunez DTO and the Caro-Quintero DTO. Each of the four is distinctive from one another while maintaining many drug trafficking, familial, and social associations.

5. According to DEA, about 120 people die in the US each day from drug overdoses, half of them from heroin or prescription drug opioids. In February the President announced over \$1 billion in new mandatory spending to address the epidemic of opioid and heroin use – which CDC indicates caused almost 29,000 deaths in 2014. Your 2015 National Drug Threat Assessment shows steady increases in heroin use, dramatic increases in rates of heroin poisoning, and a strong correlation between opioid abuse and new heroin addiction. Your request calls for four new heroin groups and additional drug diversion teams.
- a) How many heroin teams groups does DEA currently have deployed?
- b) Where does DEA plan to place proposed new teams?

**Answer**

- a) Because the same significant poly-drug trafficking organizations (DTOs) responsible for other illicit drug threats are also responsible for the vast majority of the heroin supply, DEA enforcement groups focus their effort on these DTOs rather than heroin specifically. The four new enforcement groups requested in FY 2017 would increase DEA's resources devoted to targeting the poly-drug organizations that distribute heroin across the country. DEA will place the new enforcement groups in field divisions reporting heroin as the greatest illicit drug threat, where they will provide additional staff to respond to the heroin epidemic.
  - b) In the 2015 National Heroin Threat Assessment (NHTA), 7 of DEA's 21 domestic field divisions identified heroin as the greatest illicit drug threat in their areas of responsibility. These seven field divisions are: Chicago, Detroit, New England, New York, Philadelphia, Washington, and New Jersey. However, DEA will place the new enforcement groups in field divisions reporting heroin as the greatest illicit drug threat at the time funding is to be provided, which may differ from when data gathered for the 2015 threat assessment. As the threat changes, DEA needs to maintain the flexibility to place the groups into those areas that will have the greatest impact.
6. Fentanyl, a powerful synthetic opioid, is often used to “cut” heroin to increase its potency, and is a reason fatalities are rising. While primarily trafficked from foreign factories, it is also diverted domestically. How is DEA addressing international supply and domestic diversion?

**Answer**

In general, DEA and its law enforcement counterparts have encountered clandestinely manufactured fentanyl produced by international drug traffickers in the illicit drug supply. Fentanyl has been controlled under Schedule I of the 1961 United Nations Single Convention of Narcotic Drugs since 1964. Domestically, Fentanyl is a Schedule II controlled substance that was placed under the schedules upon enactment of the Controlled Substances Act in 1970. In response to an increase in fentanyl overdose deaths, DEA placed a fentanyl immediate precursor (4-anilino-N-phenethyl-4-piperidine (ANPP)) under Schedule II in 2010. In addition, DEA placed another fentanyl precursor (N-phenylethyl-4-piperidone (NPP)) under List I chemicals in 2007. DEA took these actions to prevent the clandestine synthesis of fentanyl by clandestine chemists in the United States.

The primary source of clandestinely produced fentanyl is China. As such, DEA has begun to work closely with Chinese counterparts regarding synthetic drugs, including fentanyl, and to bridge the working relationship between the U.S. and China's chemical industry. As a result of this increased liaison and cooperation, on October 1, 2015, China scheduled 116 substances that have been identified as synthetic substances. This action by the Chinese has increased international cooperation and enabled criminal prosecution of targets that are distributors of these 116 substances. Through efforts such as these, DEA continues to address international supplies of fentanyl.

To respond to the domestic distribution of clandestine manufactured fentanyl, DEA has initiated various operations and reporting tools targeting the trafficking of synthetic opioids, including fentanyl. DEA is currently monitoring the shipments of fentanyl and fentanyl analogue precursor chemicals as well as the emergence of synthetic opioids. DEA strictly regulates the import and export of List I chemicals, which include those related to fentanyl and its analogues. DEA actively works with the United Nations Office on Drugs and Crime (UNODC), the International Narcotics Control Board (INCB), and partner countries to develop information sharing procedures to better control precursor chemicals through combined task force projects.

DEA will continue to utilize all available regulatory and enforcement tools to respond to this public health and safety issue. Recently, the DEA temporarily scheduled the fentanyl analogues, namely acetyl fentanyl (in July 2015), butyryl fentanyl and hydroxythiofentanyl (in May 2016). DEA conducted both emergency scheduling actions in response to the trafficking and abuse of these "fentanyl-like" substances. DEA found the substances posed an imminent hazard to public safety, justifying the emergency scheduling actions. These scheduling actions subject the substances to a regulatory scheme that includes registration, record keeping, import and distribution restrictions and manufacturing quota limits. DEA continues to monitor fentanyl and fentanyl analogue encounters by the public and law enforcement to ensure we can act quickly on any potential scheduling actions.

DEA also continues to work with our domestic and international partners in public health and law enforcement to address ongoing issues related to diversion, illicit manufacturing and trafficking on a global scale.

7. Your FY17 request assumes DEA will absorb most of a \$15 million increase in pay, rent, and State Department bills, offset by to-be-identified "savings". At the same time, DEA must fill vacancies and keep up current operations.
  - a) Have DEA hiring and operations recovered from the hiring freeze and sequester? Will the request allow DEA to sustain operations, and avoid a retirement crunch?
  - b) DEA uses prior year unobligated balances to help cover current year payroll costs and smooth out fiscal year financing planning. About \$90 million and \$75 million of such balances were used in fiscal years 15 and 16, respectively. Is DEA likely to continue this practice in FY17, and why?

**Answer**

- a) DEA continuously evaluates ways to best spend existing resources. DEA does not have the staff it had before the hiring freeze was implemented in FY 2011 and DEA's staffing has declined each year since FY 2011. However, the FY 2016 funding and the FY 2017 President's Budget allows DEA to maintain operations and address current attrition, as does the FY 2017 President' Budget.
  - b) DEA has used a Zero Based Budgeting (ZBB) process to manage its resources since FY 2007. In executing its budget each year, DEA considers all funding sources available, including prior year unobligated balances, to meet its operational and payroll requirements. DEA anticipates continuing to use prior year balances in FY 2017 to meet payroll and operational needs.
8. Committee staff recently visited DEA in Florida and Puerto Rico and learned of the increasing use of "submersibles" – once only found in the Eastern Pacific. Your 2015 strategy also notes that cocaine flow through the Caribbean has nearly tripled in the last four years, and describes increasing vulnerabilities from container, cruise ship, and go-fast boats, as well as transshipment through Puerto Rico. What are the biggest contributors to the increases in flow, to include the impact of reduced source and transit zone interdiction by DOD and DHS?

**Answer**

DEA estimates of cocaine production in Colombia have more than doubled between 2013 and 2015, and documented cocaine flow to the Caribbean has increased significantly over the same period. While the flow through the Caribbean has increased, most of the cocaine smuggled into the United States is transported over the Southwest Border. According to the 2015 National Drug Threat Assessment, an estimated 13 percent of cocaine flow into the US transit zone was through the Caribbean corridor, while most – 87 percent – was transferred via the Mexico/Central America corridor.

Further, while it is true that semi-submersibles are seized in international waters in the Eastern Pacific, and occasionally in the Western Caribbean, DEA is unaware of any semi-submersible or submersible seizures occurring in the central or eastern Caribbean, nor in the areas surrounding Florida or Puerto Rico. Sometimes the submersibles seized in other areas are towed into US ports post-seizure, but again, DEA is not aware of any submersible seized in Puerto Rico or Florida in the course of an active smuggling operation.

Since 2010, law enforcement has conducted enhanced operations on the U.S. SWB, which has pushed Drug Trafficking Organizations (DTOs) toward the Caribbean Corridor; a trend that is likely to continue. Even if law enforcement operations in Mexico and Central America were to return to pre-2010 levels, DTOs would likely continue to use the Caribbean Corridor. The maritime route poses inherent challenges to drug law enforcement operations, making this route attractive to DTOs. DEA is also concerned that Caribbean gangs have the potential to evolve into DTOs due to increased exposure to these DTOs' methods of operation.

Current seizure statistics and estimates strongly suggest that Mexico land routes will remain the DTOs' preferred pathway for trafficking drugs into the United States. However, DTOs will continue to leverage the Caribbean trafficking corridors to exploit the distinct advantages offered by the maritime routes. While flow has tripled through the Caribbean, there has not been a corresponding reduction along the Southwest Border. It remains unclear what percentage of the Caribbean flow is destined for the United States versus other destinations, such as Europe and Africa.

If current drug trafficking trends hold, financial crimes and bulk cash smuggling in the Caribbean could increase as a result of increased drug trafficking operations in the region. DTOs could exploit the financial systems and weak economies in the Caribbean to launder their illicit proceeds. DTOs will likely continue to use The Bahamas and British Virgin Islands for money laundering operations, as these countries' bank privacy laws, lack of reporting requirements, and currencies, facilitate the laundering of illicit profits.

9. Transnational gangs remain a top DEA priority in your 2015 threat assessment, and in DEA's focus on breaking up "priority target organizations" (PTOs), and their leaders, "consolidated priority organization targets" (CPOTs). DEA reports in FY15 it disrupted or dismantled 2,593 PTOs, indicted 25 top CPOTs, with another 19 arrested, but notes the spread of cartel-gang networks, in particular Mexican cartels. Apart from indictment and disruption, what is the evidence anti-trafficking enforcement is measurably disrupting supply chains and networks?

### **Answer**

DEA operations have resulted in a number of successful prosecutions/convictions, illustrating disruptions of supply chains/networks. These prosecutions and convictions result in the long-term removal of key gang and cartel leadership, impacting the organizational structure and business models of large-scale DTOs. Remaining members must reorganize structurally, and develop alternative business models in order to remain viable. DEA's ongoing efforts result in sustained removal of gang/cartel leadership, causing not just a disruption, but ultimately a complete dismantling, of a criminal organization. In addition, DEA's Special Operations Division, through its Violent Urban Organized Crime Section, coordinates large-scale multi-jurisdictional operations that have resulted in greater numbers of RICO indictments. This includes the indictment by the U.S. Attorney's Office for the Western District of Texas of the Bandidos Outlaw Motorcycle Gang's leadership, which was handed down subsequent to the widely publicized shootout that took place in Waco, Texas in May 2015.

Finally, DEA continues to deny drug trafficker revenue to the greatest extent possible. DEA is not only making it more difficult for traffickers to operate by taking their money away, but is following the money trail back to the command and control of the most significant drug trafficking organizations impacting the United States. On a daily basis, DEA denies revenue to drug trafficking organizations through money and property seized, as well as the value of seized drugs, which is the amount of funds invested in the drugs by the owner computed at conservative production cost levels. From October 1, 2014 through September 30, 2015, DEA was responsible for denying \$3.5 billion in drug trafficking revenue, exceeding the FY 2015 target of \$2.8 billion.

10. DEA in FY15 coordinated 7,300 State and local meth lab cleanups, including 7,150 Container Program lab pickup and disposals, and administered 150 on-site cleanups.
- What is your estimate for the number of labs in fiscal years 2016 and 2017, and where do you see the biggest areas of growth?
  - What is the status of efforts to disrupt importation of meth from Mexico and the trafficking in precursor chemicals from China?

**Answer**

- As of March 31, 2016, DEA has coordinated 4,127 state and local meth lab cleanups, including 4,065 Container Program lab pickup and disposals, and 62 on-site cleanups in 2016. Based on these numbers, DEA estimates 8,253 meth lab cleanups for all of FY 2016. For FY 2017, DEA estimates 9,100 cleanups will be completed. DEA anticipates that states such as Iowa, New York and Pennsylvania will see the most growth in cleanups and disposals due to the expansion of the Container Program in these areas.
  - The United States has played a leading role in the design, promotion, and implementation of cooperative multilateral chemical control initiatives. The United States actively works with other concerned nations, the United Nations Office on Drugs and Crime (UNODC) and the International Narcotics Control Board (INCB), to develop information sharing procedures to better control precursor chemicals, including pseudoephedrine and ephedrine, the principal precursors in one method of methamphetamine production. U.S. officials are members of a combined task force for both Project Cohesion and Project Prism. These two international initiatives provide platforms for international cooperation in matters related to substances used in the illicit manufacture of amphetamine-type stimulants, the focus of Project Prism, and heroin and cocaine, the focus of Project Cohesion. The United States has established close operational cooperation with counterparts in major chemical manufacturing and trading countries. This cooperation includes information sharing in support of chemical control programs and to prevent chemical diversion. The DEA has also developed a better operational relationship with China and are engaged in informational sharing regarding various drug trafficking operations. DEA routinely exchanges scientific based information on methamphetamine production with our Mexican counterparts. In January 2016, Mexico controlled the methamphetamine precursors, benzaldehyde, nitroethane, nitromethane and benzyl chloride, which replaced phenylacetic acid as the preferred methamphetamine precursors. DEA continues to monitor emerging trends regarding precursors and transportation flow in an effort to diminish methamphetamine production in Mexico and subsequently diminish the flow across the Southwest Border.
11. DEA's intelligence program supports EPIC, a 28-agency facility that serves as a clearinghouse for tactical intelligence and a central point for the collection, analysis, and dissemination of information on worldwide drug movement and alien smuggling. Given the enhanced focus on smuggling and violent criminal organizations operating along the U.S.-Mexican border, what role is EPIC playing in supporting enforcement efforts in the region?

## Answer

The El Paso Intelligence Center (EPIC) is a multi-agency National Level Intelligence Center, which produces and disseminates tactical, operational, and strategic intelligence to support investigators, interdictors, officers, analysts, and agencies' leadership with a focus on all threats and all crimes affecting the United States from within the Western Hemisphere. EPIC currently houses 28 different agencies (federal, state, local, tribal, and international), including entities from the intelligence community, Department of Defense, Republic of Mexico, and Colombia.

EPIC maintains information-sharing agreements with 48 states and provides real-time support to state and local law enforcement officers patrolling the nation's highways and by-ways. EPIC shares near real-time tactical information with Joint Interagency Task Force-South and other drug interdiction agencies/elements within the hemisphere and along the Southwest Border.

EPIC is also becoming the national one stop shop hub for federal, state, local, and tribal national de-confliction; facilitating automated de-confliction with the High Intensity Drug Trafficking Areas (HIDTAs) and federal law enforcement. In May 2014, the Deputy Attorney General (DAG) issued a memorandum that set forth the Department of Justice's policy regarding the mandatory use of de-confliction systems in the course of all current and future investigative activity. The DAG specifically mandated use of DEA's DICE and DARTS de-confliction systems for investigative data de-confliction. EPIC has the ability to leverage DICE/DARTS, and other related databases currently not available in any other centralized location including High Intensity Drug Trafficking Area's (HIDTA) systems. This deconfliction capability at EPIC along with EPIC's programs provide officer safety enhancements.

EPIC provides tactical support to the region through its 24/7/365 Watch Operations and Tactical Operations Sections; enabling real, and near-real time intelligence support to law enforcement officers and investigators. EPIC's Law Enforcement Technical Collection program provides near-real time reporting on alien smuggling and gang activity along the Southwest Border; sharing information directly with federal law enforcement officers and criminal investigators. In FY 2015, the Tactical Operations Section provided over 2,000 tactical reports related to gang and alien smuggling across the Southwest Border and has provided over 1,300 reports during the first half of FY 2016.

Operationally, EPIC also provides direct analytic support to criminal investigations via the Gang Intelligence and Firearms and Explosives Intelligence Units. This support includes providing information that identified previously unknown drug smuggling activities along the border and within the federal prison system. EPIC's Joint Collection Management Unit, working with EPIC partners, facilitates collection of intelligence to directly support criminal investigations and interdiction activities.

At the strategic level, EPIC has produced multiple finished intelligence products to aid decision and policy makers in understanding numerous issues involving alien smuggling, illegal



immigration, and gang activity associated with cross-border crime. This support included several products analyzing the surge in undocumented minors and special interest alien smuggling activity.

12. Your budget notes the threat posed by synthetic cannabinoids, with names such as “K2” or “Spice”.
- a) How many drugs are in a *temporary* Schedule I category, and what is the status of efforts to permanently schedule them?
- b) What new synthetic drug threats are you seeing?

**Answer**

- a) As of April 2016, the DEA has used the temporary scheduling provision on 10 different occasions since 2011 to control a total of 35 new psychoactive substances (NPS) and is collecting information on additional NPS for a potential response. Prior to 2011 the challenges of synthetic designer drugs was more limited and DEA used temporary scheduling on a far more limited basis. Recently, the DEA completed the control of 2 fentanyl analogues and had also contracted pharmacological studies to further evaluate these substances for permanent control. In an effort to protect the public, DEA, with the National Institute on Drug Abuse, and the Food and Drug Administration, collect information to assist in our evaluation of temporarily controlled substances for permanent scheduling. DEA has initiated the 8-factor review process required for permanent scheduling for each of the substances temporarily controlled. Additionally, the DEA works with international partners to respond to the public and safety issues posed by NPS. The DEA has utilized temporary scheduling authority to respond to the most harmful and persistent NPS. However, there are many additional NPS that have appeared on the illicit market that pose a significant threat to public health and safety and this continually expanding number of NPS exceeds the combined resources of the DOJ and HHS response.

**Answer**

- b) The DEA remains deeply concerned as to the trafficking and abuse of NPS to include synthetic cannabinoids and their associated drug products. Over the last 7 to 10 years, hundreds of NPS have been encountered on the illicit market with no approved medical or industrial use. The DEA has been the lead agency in responding to the public health and safety issues presented by these dangerous and often unpredictable substances. This challenge has been further complicated by both the increase in the number of new substances and an expansion in the number of drug classes being encountered on the illicit market. From our recent experience, we have encountered new drug classes to include new opioids such as fentanyl analogues, dissociative substances such as PCP-like substances, and benzodiazepines. Synthetic cannabinoids and cathinones remain the most encountered NPS and the reckless distribution of these dangerous substances remains a serious concern and priority for the DEA. Fentanyl analogues abuse has resulted in multiple deaths nationwide. In addition, these analogues pose health and safety concerns for law enforcement officers who encounter these substances.
13. DEA’s Office of Diversion Control lists a number of plant-derived and folk medicines of concern, to include “Kratom” (*Mitragyna speciosa*), derived from a plant originally from Asia.

Kratom is described as having “opioid-like activity; use leading to addiction, as well as perhaps more serious consequences”, but is not scheduled under the CSA. How does DEA go after this sort of drug, whether a “botanical” or synthetic, if it is not scheduled?

### **Answer**

The DEA continues to monitor the abuse and trafficking of kratom and other psychoactive drugs of abuse as well as plants. In 2014, the DEA made an official request to the Department of Health and Human Services (HHS) for a scientific and medical evaluation and scheduling recommendation for kratom and its active constituents. DEA has collected and evaluated information relating to the abuse of kratom and communicated this information to HHS for their evaluation. As of April 2016, DEA is awaiting HHS' scheduling recommendation for kratom.

14. Operation Breakthrough is DEA's ongoing research project to estimate cocaine and heroin production by examining cultivation patterns, the yield and alkaloid content of coca crops, and the efficiency of clandestine laboratory operations. Your request describes this program as having “revolutionized” the U.S. Government collective understanding of the threats of illicit crops and drug production. What are your estimates of the costs for Operation Breakthrough in fiscal years 2015 and estimated/requested for 2016-17, as well as specific impacts it has had in recent years?

### **Answer**

In FY 2015, DEA allocated approximately \$325,000 to Operation Breakthrough and expects to allocate approximately \$385,000 each year in FY 2016 and FY 2017. Below are some recent examples of DEA Operation Breakthrough's field work and analysis and its impact on the U.S. Government's (USG) collective understanding of the threats posed by illicit crops:

- Breakthrough coca yield studies have documented that not all hectares of coca in the different growing regions of Colombia and Peru are equally productive due to differences in coca yields and cocaine alkaloid contents. This insight is important as it allows U.S. and Host Nation decision makers to prioritize eradication operations to maximize the amount of potential cocaine removed from the international cocaine distribution system.
- In February 2016, the Breakthrough Program completed a month-long coca leaf yield study in the Norte de Santander (NdS) growing region of Colombia. Analysis of the data collected during the 2016 NdS study (some 21,000 data points) indicates that the average mature coca leaf yield has increased by 30 percent over the past 1 1/2 years (Previous studies were done in 2011 and 2014). With this new data, NdS—with some 30,500 hectares under coca cultivation—is now estimated to be the single largest coca growing area in the Andean Region. This increased accuracy in estimating NdS coca yields documented by Breakthrough added about 13 metric tons of pure cocaine to the USG's 2015 cocaine production estimate for Colombia. The three most recent studies in NdS also provided unique strategic intelligence insights into how coca farmers in other regions of Colombia may react to the end of aerial crop eradication in Colombia.
- In 2015, the Breakthrough Program also carried out three other month-long coca yield studies in Colombia that had a direct impact on the USG's 2015 cocaine production estimate. These studies were done in the Caquetá, Guaviare, and Antioquia growing regions of Colombia. Coca yields in

all three growing regions were documented as having significantly increased since the last studies in each area. The Breakthrough Program attempts to revisit each of the major growing regions about once every 3 to 4 years to ensure up-to-date and accurate data. As a direct result of these three studies, the USG added nearly 9 metric tons of pure cocaine to the 2015 production estimate for Colombia.

- Since early 2014 the Breakthrough Program has completed five month-long coca yield studies in Peru. In four of the five growing areas—Monzon Junin, Aguaytia, and the Upper Huallaga Valley—Breakthrough documented decreases in coca yields. The drop in coca yields range from only six percent in the Junin to nearly 43 percent in Monzon. In one growing area—the Central Huallaga Valley—coca yields have increased by 45 percent. This updated coca yield data will be directly incorporated into the USG's 2015 cocaine production estimate for Peru.

Operation Breakthrough's studies continue to provide unique and critical data that—when incorporated into the USG imagery-based cultivation estimates—improves these estimates and continues to be critical to counterdrug resource allocation decisions made at the highest levels of the USG.

**The Honorable Jaime Herrera Beutler**  
**Subcommittee on Commerce, Justice, Science, and Related Agencies**  
**Questions for the Record**  
**DEA FY 2017 Budget Request**

1. Would the DEA benefit from increased use of analysts to support their Special Agents in the field? Would it be an effective use of resources to utilize more analysts to increase the effectiveness of the agents?

**Answer**

DEA uses position ratios to ensure that the appropriate types and numbers of positions are included in DEA's budget requests. The use of position ratios promotes balanced staffing that includes a mix of positions appropriate for the workload. Currently, for every 5 Special Agents, DEA has approximately 1 Intelligence Analyst (IA). Any increase in the use of IAs would benefit DEA as they bring significant analytical and intelligence skills as well as unique investigative perspectives. DEA also has analysts at the DEA Special Operations Division, in the Special Intelligence Operational Support Section and within the Document and Media Exploitation unit, who provide specialized large-scale, short-term analyst assistance to the field.

2. The Asset seizure program is a complicated issue and there have been some alarming reports of abuse of the program over the last year. However, State and local drug task forces are often partially supported by the program, and the task forces are often a force multiplier for the DEA. What impact will the temporary suspension of asset seizure sharing with state and locals law enforcement have on your partnerships and working relationships with those agencies, as well as local drug task forces, around the nation? How could the suspension affect the amount or type of work being done to combat drugs in local communities?

**Answer**

The temporary suspension of the Department's Equitable Sharing program, which was lifted on March 27, 2016, did not have a significant impact on State and Local (S&L) participation on DEA task forces; almost all S&L partners made a decision to continue to participate in DEA Task Forces during the temporary three month suspension. DEA relies on close cooperation and coordination with our S&L law enforcement partners to advance DEA's operational and investigative capabilities. Currently, DEA has approximately 2,600 Task Force Officers (TFO) assigned to DEA domestic offices. Through S&L participation, DEA gains access to S&L jurisdictional expertise and is able to develop highly effective drug investigations, while force multiplying DEA's domestic law enforcement workforce within our local communities and across the nation. Additionally, the program provides a federal presence in sparsely populated areas where DEA would not otherwise be represented.

The Department of Justice (DOJ) Asset Forfeiture Program supports DEA task force operations through Joint Law Enforcement Operations (JLEO) funding, which supports overtime, training, and equipment as well as other task force costs, as well as Equitable Sharing Program proceeds. Proceeds from the Equitable Sharing Program help S&L agencies the ability to defray operational, case, and equipment expenses. Participation on task forces also provides training to officers on complex investigative techniques, officer safety, and other vital policing techniques. The benefits received through these funding streams help S&L agencies justify assigning officers to a DEA Task Force on a full time basis.

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